Stroud's Judicial Dictionary of Words and Phrases

Third Cumulative Supplement

Ninth Edition

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Preface

As with recent editions of *Stroud*, the intention is to provide annual cumulative supplements noting new judicial and statutory definitions.

The editorial policy remains as stated in the preface to the main work. In particular, *Stroud* is a judicial dictionary, and not a legal dictionary: it is dependant, as it always has been, on the courts and legislatures for the provision of definitions. The result is that there will be expressions of importance to lawyers or related professions that do not feature in *Stroud* because their definition has not fallen to be considered in a decided case or glossed by statute. Equally, there are many expressions that would have no place in a legal dictionary – not being terms of art forming part of the mechanism or structure of the law – that have been defined by the courts or legislature in a way likely to be helpful to lawyers and related professions and that are therefore included in *Stroud*.

In this respect *Stroud* sees itself as a companion work to *Jowitt's Dictionary of English Law*, which aims to define terms forming part of the structure of the law whether or not they have received recent judicial or statutory definition.

This supplement is up to date to the end of July 2019.

Stroud has benefited greatly over the years from comments and suggestions provided by readers. All communications are always most gratefully received and should be sent to the publishers in the first instance.

Daniel Greenberg
London
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A

ABNORMAL OCCURRENCE. "I would accept the charterers' submission recorded in sub-para 44(iii) that an 'abnormal occurrence' has its ordinary meaning. It is not a term of art. As stated in that sub-paragraph, '[a]n occurrence was just an event—something that happened on a particular time at a particular place in a particular way. "Abnormal" was something well removed from the normal. It was out of the ordinary course and unexpected. It was something which the notional charterer would not have in mind.'...It is to my mind important to note the emphasis in the cases upon the meaning of the expression 'abnormal occurrence'. I would accept the charterers' submission in para 44(iii) of the Court of Appeal's judgment that 'abnormal' is something well removed from the normal. It is out of the ordinary course and unexpected. It is something which the notional charterer or owner would not have in mind."—*Gard Marine and Energy Ltd v China National Chartering Company Ltd* [2017] UKSC 35.

ABUSE. Stat. Def., Housing Act 1985 s.81B(2C) inserted by Secure Tenancies (Victims of Domestic Abuse) Act 2018 s.1.

ACCELERATED PAYMENT NOTICE. "'Follower' and 'accelerated payment' notices were introduced by the Finance Act 2014 ('FA 2014') with a view to addressing tax avoidance. A follower notice renders the recipient liable to a penalty if he does not take steps to counteract or surrender a tax advantage. An accelerated payment notice requires up-front payment of disputed tax."—*Haworth, R (On the Application Of) v Revenue and Customs* [2019] EWCA Civ 747.

ACCESSORY. "Nor is it a natural meaning of the word 'accessory'. To take the UT's example, a bicycle bell can fairly be described as an 'accessory' to the bicycle, even if does not add to its range of functions. 41. A better answer is one which distinguishes more clearly between the printer itself, and the materials used by it. Ink and paper are both necessary for the printer to do its work. But one would not naturally describe either as a 'part or accessory' of the printer, any more than petrol would be regarded as a 'part or accessory' of a car. The words 'particular service relative to' its function need to be more narrowly construed as referring to services directly connected with the mechanisms or processes by which it performs that function. As Advocate-General Kokott said in *Turbon 2* (para 72), the ink though 'suitable solely for use' with this type of printer, was not essential for its 'mechanical and electronic functioning'. This approach is also consistent with the ultimate conclusion of the court in *Turbon* 2. Although the cartridge (unlike the ink) played a part in the mechanical functioning of the printer, its dominant or 'essential' function was to supply it with ink."—*Amoena (UK) Ltd v Revenue and Customs* [2016] UKSC 41.

ACCIDENT. "It follows that to determine if there has been an 'accident' requires consideration of whether there has been an injury (i) caused by an event; (ii) that is external to the claimant, and (iii) which was unusual, unexpected or untoward rather

than resulting from the normal operation of the aircraft."—*Labbadia v Alitalia (Societa Aerea Italiana SPA)* [2019] EWHC 2103 (Admin).

ACCOMMODATION. See SETTLED ACCOMMODATION.

ACCOUNTING PRACTICE. See GENERALLY ACCEPTED ACCOUNTING PRACTICE.

ACT OF STATE. For discussion of the nature and scope of the doctrine see *Rahmatullah (No 2) v Ministry of Defence* [2017] UKSC 1.

ACT OR NEGLECT. "Specifically, the issue is whether the term 'act' in the phrase 'act or neglect' means a culpable act in the sense of fault or whether it means any act, whether culpable or not....In my judgment, since clause 8 envisages a 'more or less mechanical apportionment of liability', the word 'act' in clause 8(d) would reasonably be understood to bear its ordinary and natural meaning of any act without regard to questions of fault. Since clause 8(d) is a sweeping up provision the sphere of risk cannot be identified. Instead, the justification in clause 8(d) for apportioning a cargo claim 100% to a party is that the claim arose out of that party's act. 'Neglect' is used to encompass claims which arise, not out of a party's act, but out of a party's failure to act. I accept that 'neglect' can sensibly only mean a failure to do that which the party ought to do. But by contrast 'act' can sensibly mean any act, whether culpable or not."—*Transgrain Shipping (Singapore) PTE Ltd v Yangtze Navigation (Hong Kong) Co Ltd* [2016] EWHC 3132 (Comm).

"The issue in this case is whether the word 'act' in the phrase 'act or neglect' means a culpable act in the sense of fault or whether it means any act, whether culpable or not. The question arises as a matter of construction of clause 8 of the Inter-Club Agreement 1996 ('the ICA') an agreement made between Protection and Indemnity Associations (or 'Clubs') in relation to liability for cargo claims as between shipowners and charterers. It arises on an appeal from an award of arbitrators....For my part I agree both with Teare J and the arbitrators that the word 'act' in the context of the ICA should be given its natural meaning, there is no need to confine it to 'culpable act' and I would dismiss this appeal."—*Transgrain Shipping (Singapore) Pte Ltd v Yangtze Navigation (Hong Kong) Co Ltd* [2017] EWCA Civ 2107.

ACTUAL OCCUPATION. "The authorities seem to me to support the following propositions as regards 'actual occupation':

i) The word 'actual' in 'actual occupation' 'emphasises that what is required is physical presence, not some entitlement in law' (*Williams & Glyn's Bank Ltd v Boland* [1981] AC 487, at 505, per Lord Wilberforce);

ii) The nature of the relevant property can matter. 'Occupation', Lord Oliver explained in *Abbey National Building Society v Cann* [1991] AC 56 (at 93), is a 'concept which may have different connotations according to the nature and purpose of the property which is claimed to be occupied'. In a similar vein, Arden LJ observed in *Malory Enterprises Ltd v Cheshire Homes (UK) Ltd* [2002] EWCA Civ 151, [2002] Ch 216 (at paragraph 80), 'What constitutes actual occupation of property depends on the nature and state of the property in question';

iii) 'Occupation' involves 'some degree of permanence and continuity which would rule out mere fleeting presence' (to quote again from Lord Oliver in *Abbey National Building Society v Cann*, at 93). Lord Oliver went on to say (at 93), 'A prospective tenant or purchaser who is allowed, as a matter of indulgence, to go into property in order to plan decorations or measure for furnishings would not, in ordinary parlance, be said to be occupying it, even though he might be there for hours at a time'. On the

other hand, '[r]egular and repeated absence' can be consistent with 'actual occupation': see *Kingsnorth Finance Co Ltd v Tizard* [1986] 1 WLR 783, at 788;

iv) 'Occupation' does 'not necessarily…involve the personal presence of the person claiming to occupy' (Lord Oliver in *Abbey National Building Society v Cann*, at 93). In the *Cann* case, Lord Oliver expressed the view (at 93) that a 'caretaker or the representative of a company can occupy…on behalf of his employer'. In *Lloyds Bank Plc v Rosset* [1989] Ch 350, Nicholls LJ (in the Court of Appeal) considered that 'the presence of a builder engaged by a householder to do work for him in a house is to be regarded as the presence of the owner when considering whether or not the owner is in actual occupation' (see 378). In *Kling v Keston Properties Ltd* (1983) 49 P&CR 212, Vinelott J considered the plaintiff to have been in 'actual occupation' of a garage in which his wife's car had been confined because the door was blocked and thought that the result would probably have been the same even if the car had not been physically trapped: the plaintiff, Vinelott J suggested (at 219), 'should be treated as being in continuous occupation of the garage while he was using it in the ordinary course for the purpose for which the licence was granted, that is, for garaging a car as and when it was convenient to do so';

v) In contrast, 'actual occupation' by a licensee on his own behalf does not represent 'actual occupation' by the licensor (see *Strand Securities Ltd v Caswell* [1965] Ch 958, at 980–981 and 984, and *Lloyd v Dugdale* [2001] EWCA Civ 1754, [2002] 2 P&CR 13, at paragraph 45). Nor does receipt of rents and profits now suffice to give protection. Section 70(1)(g) of the Land Registration Act 1925, the predecessor of paragraph 2 of Schedule 3 to the 2002 Act, referred to the rights of a person 'in actual occupation of the land or in receipt of the rents and profits thereof'. Nothing comparable to the italicised words is to be found in the 2002 Act;

vi) Even in the case of a house, 'occupation' need not involve residence. In *Lloyds Bank Plc v Rosset*, Nicholls LJ said (at 377) that he could 'see no reason, in principle or in practice, why a semi-derelict house…should not be capable of actual occupation whilst the works proceed and before anyone has started to live in the building'. See too *Thomas v Clydesdale Bank Plc* [2010] EWHC 2755 (QB);

vii) Occupation needs to be distinguished from mere use. In *Chaudhary v Yavuz* [2011] EWCA Civ 1314, [2013] Ch 249, use of a metal staircase and landing for the purpose of passing and repassing between some flats and the street was held not to amount to 'actual occupation'. Such activity, Lloyd LJ said (at paragraph 30), is 'use, not occupation';

viii) As Mummery LJ observed in *Link Lending Ltd v Hussein* [2010] EWCA Civ 424 (at paragraph 27), when determining whether a person is in 'actual occupation':

'The degree of permanence and continuity of presence of the person concerned, the intentions and wishes of that person, the length of absence from the property and the reason for it and the nature of the property and personal circumstances of the person are among the relevant factors';

ix) An interest belonging to a person in 'actual occupation' will be protected only if and so far as it relates to land of which he is in actual occupation. This is evident from the wording of paragraph 2 of Schedule 3 to the 2002 Act, which in this respect differs significantly from that of section 70(1)(g) of the Land Registration Act 1925;

x) The date on which a person must have been in 'actual occupation' to rely on paragraph 2 of Schedule 3 to the 2002 Act is the date of the disposition, i.e. completion."—*Baker v Craggs* [2016] EWHC 3250 (Ch).

ADEQUATE INDEMNITY. "The phrase, 'an adequate indemnity' has a less definitive meaning than 'full reimbursement'. The French text of the judgment speaks of 'une indemnisation adéquate' and the German text refers to 'eine angemessene Entschädigung'. In both languages, as in English, the words chosen can support a range of meanings, including the meaning of 'adequate compensation' or 'reasonable redress', which are not tied into the idea of full compensation for the time value of money."—*Littlewoods Ltd v Commissioners for Her Majesty's Revenue and Customs* [2017] UKSC 70.

ADJOURNED. "The Court of Appeal, in ordering that any further enforcement of the award should be 'adjourned' under section 103(5) pending determination of the section 103(3) proceedings, was, therefore, misusing the word in the context of section 103(5). Of course, any decision of an issue raised under section 103(2) or (3) may take a court a little time, even if it is only while reading the papers, or adjourning overnight or for a number of weeks, in order to consider and take the decision. But that does not mean that 'the decision' was being adjourned within section 103(5). On the contrary, delays of this nature are all part of the decision-making process."—*IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation* [2017] UKSC 16.

ADULT DOG. Stat. Def., Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2.

ADVISORY COMMITTEE (ECCLESIASTICAL). Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

AFFECTS. "The general meaning of the word 'affects' is of having an effect on, or making a difference to, the person affected. However, in Sch.4 para.3(2) the context in which the word is used shows that it has the more limited meaning of an effect on, or difference to, the relevant proprietor that is adverse to that proprietor's interest."—*Dhillon v Barclays Bank Plc* [2019] EWHC 475 (Ch).

AGGRIEVED. "As for 'aggrieved', the Oxford English Dictionary (2nd edit) provides four definitions of aggrieved. Two are described as obsolete. One is 'injured physically, hurt, afflicted.' However the definition which is apposite for present purposes is: 'injured or wronged in one's rights, relations or position; injuriously affected by the action of any one; having cause for grief or offence, having a grievance.' Now there are cases where the dictionary definition has to yield in the face of special circumstances, for example where a word in common usage has an additional meaning as a legal term of art or where the statute itself provides a definition, but in the United Kingdom the Oxford English Dictionary can be taken to be a reliable indicator of the ordinary and natural meaning of a particular word. This is not a case of special circumstances. Thus, for a person to be 'aggrieved' it is not enough that he is unhappy about something; he must have an identifiable cause for his unhappiness and it must have adversely affected him in some way."—*Macauly, Opinion of the Inner House of the Court of Session in the Special Case Stated by the Scottish Land Court at the Request of Against Mrs Mary Ann Morrison and Mark Tayburn* [2018] ScotCS CSIH 50.

AIR NAVIGATION ORDER. Stat. Def., Space Industry Act 2018 s.69.

AIR SOURCE HEAT PUMP. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

AIRCRAFT. Stat. Def., Laser Misuse (Vehicles) Act 2018 s.3.

ALLEGATION. See Information.

ANAEROBIC DIGESTION. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

ANTHROPOGENIC EMISSIONS. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

ANY. "Ms Slow prays in aid the decision of Eve J in *Clarke-Jervoise v Scutt* [1920] 1 Ch 382. That case concerned a tenancy agreement in which the tenant agreed not to plough 'any grass land'. Eve J construed that phrase broadly as meaning all land covered in grass either at the date of the demise or subsequently. He therefore treated the word 'any' as meaning 'all'. I readily understand, and respectfully agree with, the decision in that case. But the judge arrived at his conclusion specifically by reference to the context in which the word 'any' appeared: see page 388. He was not saying that in every context 'any' means 'all'."—*Balfour Beatty Regional Construction Ltd v Grove Developments Ltd* [2016] EWCA Civ 990.

APPEAL. "In its conventional connotation, an 'appeal' (if it is not qualified by any words of restriction) is a procedure which entails a review of an original decision in all its aspects. Thus, an appeal body or court may examine the basis on which the original decision was made, assess the merits of the conclusions of the body or court from which the appeal was taken and, if it disagrees with those conclusions, substitute its own. Judicial review, by contrast, is, par excellence, a proceeding in which the legality of or the procedure by which a decision was reached is challenged. It is, of course, true that in the human rights field, the proportionality of a decision may call for examination in a judicial review proceeding. And there have been suggestions that proportionality should join the pantheon of grounds for challenge in the domestic, non-human rights field – see, for instance, *Kennedy v Charity Commission (Secretary of State for Justice intervening)* [2014] UKSC 20; [2015] AC 455, paras 51 and 54; and *Pham v Secretary of State for the Home Department (Open Society Justice Initiative intervening)* [2015] UKSC 19; [2015] 1 WLR 1591, paras 96, 113 and 115; and *Keyu v Secretary of State for Foreign and Commonwealth Affairs* [2015] UKSC 69; [2016] AC 1355, paras 133, 143 and 274-276. But an inquiry into the proportionality of a decision should not be confused with a full merits review. As was said in *Keyu* at para 272:

'…a review based on proportionality is not one in which the reviewer substitutes his or her opinion for that of the decision-maker. At its heart, proportionality review requires of the person or agency that seeks to defend a decision that they show that it was proportionate to meet the aim that it professes to achieve. It does not demand that the decision-maker bring the reviewer to the point of conviction that theirs was the right decision in any absolute sense.'

21. Judicial review, even on the basis of proportionality, cannot partake of the nature of an appeal, in my view. A complaint of discrimination illustrates the point well. The task of any tribunal, charged with examining whether discrimination took place, must be to conduct an open-ended inquiry into that issue. Whether discrimination is in fact found to have occurred must depend on the judgment of the body conducting that inquiry. It cannot be answered by studying the reasons the alleged discriminator acted in the way that she or he did and deciding whether that lay within the range of reasonable responses which a person or body in the position of the alleged discriminator might have had. The latter approach is the classic judicial review investigation."—*Michalak v General Medical Council* [2017] UKSC 71.

APPROPRIATE. "In the judgment of this court the word 'appropriate', as used in section 13A, does not require any gloss. What however can be accepted is that it is inherent in section 13A that the making of a compliance order must be justified. Such an order therefore can only be made if there is proper reason for so doing. How an order of this kind is to be justified will depend, when the court in question is assessing what is appropriate, on the facts and circumstances of the individual case. Nevertheless, it can confidently be said that for this purpose considerations of proportionality must be involved in the decision-making process. They must be involved just because such considerations are themselves inherent in the legislative use of the word 'appropriate' in section 13A. When set in the context of compliance orders in general and travel restrictions under subsection (4) in particular. A travel restriction involves a restriction on freedom of movement, an important right in itself. Moreover, there will be cases where a travel restriction may involve perspective interference with the enjoyment of private or family life or the enjoyment of property. Thus, in considering whether or not to make an order imposing a travel restriction, under section 13A(4), the court has to strike a balance between the need to ensure that the confiscation order in question is effective and the risk of that confiscation order being rendered ineffective if no travel restriction is made, on the one hand, and the impact upon the individual defendant, if a travel restriction is made on the other hand. This court does not think it likely to be helpful to give any further generalised guidance to Crown Court judges, or to seek to enumerate, if that were possible, factors likely to be relevant, in assessing whether or not it is appropriate to make a compliance order containing a travel restriction under section 13A. This is just because, as we have said, each case must be the fact and circumstance specific. But what must always be borne in mind for the purpose of considering making an order under section 13A is that the 'appropriateness' of making such an order has to be geared towards the purpose of making the confiscation order in question effective."—*R. v Pritchard* [2017] EWCA Crim 1267.

"The word 'appropriate' generally confers a very broad latitude and discretion. However the word takes its meaning from the context."—*The Department of Justice v Bell* [2017] NICA 69.

APPROPRIATED. "The main issue in this case is whether the defendant local authority (the council) was obliged to obtain the consent of the minister before deciding to dispose of certain land in its area currently in use as allotments by the claimant, Mr Adamson, and others. That depends on whether the council has 'appropriated' that land for use as allotments within section 8 of the Allotments Act 1925, as amended. If it has, it may not dispose of the land without the consent of the minister. The council wants to use the land as part of the site of a new primary school it has decided to build. Mr Adamson is in favour of the new primary school but says it should not include the allotment land used by him and 13 others, unless the minister agrees to that. He wishes to put the case to the minister that the primary school site should be differently arranged so as to spare the allotment land. He and his fellow allotment holders are not satisfied with alternative allotment land offered to them by the council....The Agricultural Committee's contribution was to identify four additional sites appropriated for allotment use. I find this to be a very plain case of statutory appropriation of that land for use as allotments. I think the use of the verb 'zone' was its current use in town planning parlance: '[t]o divide (a city, land, etc.) into areas subject to particular planning restrictions; to designate (a specific area) for

use or development in this manner'....It is then not surprising to find evidence of subsequent continued use of that land, under tenancy agreements, as allotments, into the 1950s and 1960s. Requesting amendment of the maps to accord with the Agricultural Committee's decision was not a mere informal expression of a wish; it was a formal request to ensure that the 1935 Scheme properly reflected the Agricultural Committee's decision. That is sufficient to dispose of the appropriation point that arises in this case. If it were necessary to add to the reasoning, I would also support the contention of Mr Adamson that statutory appropriation occurs where a local authority's allotments committee formally takes control of allotment land from the general estates land owned by the local authority. Depending on the facts, it is also possible in my judgment for statutory appropriation of land for use as allotments to occur by the entering into of a formal lease of allotment land for use as such. There could be cases where the occupancy arrangement is too informal to constitute a statutory appropriation. But where a lease of land specifically and formally confines the tenant's use of the land to use as an allotment – for example, with a covenant against non-allotment use – I do not see why that should not be evidence of a decision resulting from a conscious deliberative process of the type envisaged by Dove J in the Goodman case. The use of non-legal terminology such as describing 'temporary' or 'permanent' allotments may be a pointer to whether there is a statutory appropriation or not. References to 'security of tenure' are evidence pointing in the direction of statutory appropriation but are not conclusive. The description of certain allotments as 'temporary' when they have been used as such for many decades, may not accurately indicate whether there has been a statutory appropriation or not."—*Adamson, R (On the Application Of) v Kirklees Metropolitan Borough Council* [2019] EWHC 1129 (Admin).

APPROVED PREMISES. "Approved premises are premises which have been approved by the Secretary of State under the Offender Management Act 2007, among other things 'for, or in connection with, the supervision or rehabilitation of persons convicted of offences' (section 13(1)(b)). Under section 2 of that Act, the Secretary of State is responsible for ensuring that sufficient provision is made throughout England and Wales for 'probation purposes'. These are defined in section 1(1)(c) to include 'the supervision and rehabilitation of persons charged with or convicted of offences'. Under section 1(2)(b) to (d), this includes, in particular, assisting in the rehabilitation of offenders being held in prison, supervising persons released from prison on licence and providing accommodation in APs. Under the current Offender Management Act 2007 (Approved Premises) Regulations 2014 (SI 2014/1198), Regulation 6(1)(a)(iii), among the general duties of providers of APs is a requirement that 'at least two members of staff are present on the premises at all times' (the same was required by the predecessor Regulations (SI 2008/1263), Regulation 7(1)(a)(iii)). Assuming three eight-hour shifts in a day, this means that each AP must have a minimum of six staff no matter how many people are housed there.

10. According to Probation Circular 37/2005, The Role and Purposes of Approved Premises, APs are 'a criminal justice facility where offenders reside for the purposes of assessment, supervision and management, in the interests of protecting the public, reducing re-offending and promoting rehabilitation'. Their 'core purpose' is 'the provision of enhanced supervision as a contribution to the management of offenders who pose a significant risk to the public'. They cater for male and female prisoners who are assessed as 'very high' or 'high' risk, but in order to increase take-up APs also

cater for female 'medium' risk offenders such as the appellant. Although APs also cater for people on bail or serving a community sentence, the majority of residents are there because of the conditions of their release on licence from prison. They have to abide by a curfew and a code of conduct and any breach of the conditions of their licence can result in recall to prison."—*Coll, R. (on the application of) v Secretary of State for Justice* [2017] UKSC 40.

ARCHES COURT OF CANTERBURY. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.9.

ARTICLE. Stat. Def. ("includes anything affixed to land or a building, and a reference to an article includes a reference to part of an article"), Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

ASBESTOS DUST. "The whole point turns on the true construction of the term 'asbestos dust' as it appears in the 1969 Regulations. As a matter of simple English it would seem clear that the phrase does not mean, or at least does not necessarily mean, 'dust containing only asbestos fibres'. Nor does it mean, or at least does not necessarily mean, 'dust which consists mostly of asbestos fibres' nor 'dust which contains any asbestos fibre'. The importance of the distinctions between the various phrases varies according to the relevant circumstances in which they may be used. Whatever meaning the phrase may have in simple English, however, the court is concerned only with the interpretation of 'asbestos dust' as it has been defined by the draftsman, and adopted with parliamentary authority as subordinate legislation. Where a phrase is defined in a statute or statutory regulations there is no room for an interpretation which subtracts any significant degree of meaning from such a definition, nor for one which puts any unnecessary gloss upon it. The definition of 'asbestos dust' in the Asbestos Regulations 1969, in Regulation 2(3), is: '…dust consisting of or containing asbestos to such an extent as is liable to cause danger to…health….' There is, it seems to me, no doubt that that definition might include both dust which consists simply of asbestos and nothing else, and dust which contains some asbestos but also contains dust of any other substance. It would have been perfectly possible for the word 'any' to have been inserted after the word 'containing' and to have omitted the whole of the following phrase 'to such an extent as is liable to cause danger to the health of employed persons.' However, the draftsman did not leave the definition in such simple terms, and since that was not done, it is necessary to understand what the actual definition means."—*Heynike v 00222648 Ltd (Formerly Birlec Ltd) (Fatal Mesothelioma)* [2018] EWHC 303 (QB).

ATTENDANCE (AT MEETING). Stat. Def., Housing Administration (England and Wales) Rules 2018 r.1.3.

ATTRIBUTABLE TO. "The starting point is not, I think, in the end helped by a debate about the meaning of the words 'attributable to'. I was referred to a number of dictionaries and none of them provided a definition of 'attributable to' which seemed to me to resolve the question of statutory construction or interpretation which I am faced with. It is true that the Ombudsman relied on a dictionary definition of 'caused by' or 'able to be ascribed to' and, as a general synonym for 'attributable to' I see no particular problem with that. In the dictionaries I was referred to, some refer to causation and some refer to ascribing something to something else, but I do not regard 'attributable' as in itself a difficult or ambiguous word – it means what the dictionaries say it means: something is attributable to something else if it can properly or reasonably or sensibly be ascribed to something else – and I am content to proceed on

the basis that that is the normal meaning of the phrase 'attributable to'. What, however, the dictionary cannot shed any light on is the normal meaning of the phrase 'attributable to pensionable service' and that is the phrase which is to be interpreted in para.26(2)(b) and that is, I think, a phrase that has a conventional or normal meaning in the practice of those who practise in the field of occupational pensions."—*Beaton v The Board of the Pensions Protection Fund* [2017] EWHC 2623 (Ch).

AUDITED SALES REPORT. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

AUTHORITY. See USUAL AUTHORITY.

B

BARRATRY. "I would accordingly define barratry as (i) a deliberate act or omission by the master, crew or other servant of the owners (ii) which is a wrongful act or omission (iii) to the prejudice of the interests of the owner of the ship or goods (whether or not such prejudice is intended) (iv) without the privity of the owner. In order for the act or omission to qualify as wrongful for the purposes of (ii) it must be (a) what is generally recognised as a crime, including the mental element necessary to make the conduct criminal; or (b) a serious breach of duty owed by the person in question to the shipowner, committed by him knowing it to be a breach of duty or reckless whether that be so."—*Glencore Energy UK Ltd v Freeport Holdings Ltd* [2017] EWHC 3348 (Comm).

BASIC HOURS. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

BEDROOM. "The appeal, brought by the Secretary of State for Work and Pensions in respect of a decision of the Upper Tribunal ('UT'), concerns the interpretation of Regulation B13 of the Housing Benefit Regulations 2006 (as amended). Regulation B13 was introduced with effect from 1 April 2013 by way of amendment of the 2006 Regulations by the Housing Benefit (Amendment) Regulations 2012 (SI 2012/3040) as further amended by the Housing Benefit (Amendment) Regulations 2013 (SI 2013/665). It introduced into social sector housing a cap on housing benefit ('HB') in cases of deemed under occupancy. It did so by applying what has been described as the size or bedroom criteria set out in Regulation B13. The issue for consideration in this appeal is: what is a 'bedroom' for the purpose of Regulation B13(5)? The size criteria pursuant to B13(5) entitle an HB claimant to 'one bedroom for each of the following categories of person' in occupation of the property. The categories are listed (a) to (e) as at the relevant time of the first respondent's determination.... The regulations represent an instrument of social policy applicable to the usage of social entitlement. The intention of the legislation is to: ensure that social housing is used in the most effective way possible; improve the mismatch of property with those living within it; reduce overcrowding; place families in appropriately sized accommodation; increase mobility in the socially rented sector; incentivise work; introduce greater fairness between claimants living in the private and socially rented sector; and reduce public expenditure. The purpose of the regulations is to calculate what, if any, caps are to be applied to welfare benefits, in particular HB. The regulations do not provide social entitlement to physical housing. The methodology of the regulations is that the bedroom is used as a proxy for need. The size criteria/bedroom criteria are a means of quantifying cash entitlement. A 'bedroom' does not represent a precise proxy. The Secretary of State accepts that it is an imprecise means of measuring need but it serves the purpose because all persons in housing need a bedroom and thus it is useful. It is also accepted that mismatches can arise but can be met, for example, by DHPs. 'Bedroom' is an ordinary word which is neither defined nor qualified in the regulations. The word has to be construed and applied in its context having regard to

the underlying purposes of the legislation. The underlying purpose of the regulations is to limit HB entitlement to those occupying social housing. The language of the regulations demonstrates that the criteria identified as limiting such benefit is the entitlement of a tenant to a bedroom for persons listed in subparagraphs (5) and (6). The assessment is to be carried out by the relevant authority in respect of a notionally vacant house. A point accepted by the first respondent. It is also accepted by the first respondent that B13(5) depersonalises the assessment to be performed such that the characteristics of the particular individuals are irrelevant. It follows that such an assessment is an objective one. There is nothing in the regulations to indicate that any such assessment is required to take account of how a property and, in particular, the bedrooms in the property would be used by a particular family unit. Were that to be so, the purpose underlying the legislation would be frustrated as a tenant could, by use of the property, change the objective classification so as to reduce the relevant number of bedrooms. This further demonstrates the objective nature of the assessment and, with it, the interpretation of 'bedroom' within B13(5). Such reasoning is consistent with that of the UT in Nelson and the Court of Session in IB which considered the underlying purpose of the legislation and the use of the word 'bedroom' in that context. It is not consistent with the approach of the UT in this case, which introduced a subjective element into that assessment, which I find is supported neither by the words of the regulation nor the intention of the legislation. Conclusion: For the reasons given I find that pursuant to the size criteria (Regulation B13(5) of the Housing Benefit Regulations 2006, which entitles the housing benefit claimant to 'one bedroom for each of the following categories of person' in occupation of the property) the word 'bedroom' should be interpreted as meaning a room capable of being used as a 'bedroom' by any of the listed categories and not a room capable of being used as a 'bedroom' by the particular claimant. In holding that the correct interpretation was a room capable of being used as a 'bedroom' by the particular claimant, the UT erred in law and its decision was wrong."—*The Secretary of State for Work and Pensions v Hockley* [2019] EWCA Civ 1080.

BENEFIT. "Benefit is not defined in the 1958 Act but there is some jurisprudence which is of assistance. In Re CL [1969] 1 Ch 587 the Official Solicitor was appointed receiver of the estate of a patient (a widow). The estate comprised, inter alia, a protected life interest in a trust fund settled by the patient's husband which on her death would be added to a fund settled by him on their two adopted daughters and in certain events to the daughter's children with an ultimate trust to the patient. The adopted daughters took out a summons under the Variation of Trusts Act 1958, seeking the approval of the court of an arrangement by which the patient gave up for no consideration her protected life interest in the settlement made to her and her contingent interest in remainder in the settlement in each case in favour of the adopted daughters. In determining whether the arrangements should be approved on the basis that they were for the benefit of the patient within Section 1(3) of the Variation of Trusts Act 1958 the court held that 'benefit' in Section 1(3) of the Variation of Trusts Act 1958 had the same meaning in the context of a variation as it had in the context of an advancement and that it was not necessary that there must always be some element of financial advantage to the incapable person. The court ascribed a broad meaning to the word 'benefit' in the Variation of Trusts Act 1958 and held that it was not limited to financial benefit but also included 'strong moral obligation'. In the circumstances of that case the court made the Order sought."—*Tracey v McCullagh* [2018] NICh 15.

"On its ordinary meaning, a benefit involves a net gain or favourable change in a person's position, but the comparison to be made is with his position immediately before the putative benefit was conferred."—*Revenue And Customs v Parry (Rev 1)* [2018] EWCA Civ 2266.

"I agree with Mr Burton that the starting point is a consideration of the ordinary meaning of the word 'benefit', which is a broad one. I also bear in mind his point that, in view of the Director's application of the merits criteria and, in particular, the proportionality test, it is not necessary for the Director or the court, when considering 'benefit', to consider the degree or quality of the benefit to the individual or the individual's family member. While I agree that it should not be necessary for the applicant to show that the proposed judicial review has the potential to produce a significant benefit, it seems to me that it must have some substance. It must be a real benefit. Some degree of evaluation of the benefit arising in the factual circumstances of the case must be undertaken. It is not necessary, therefore, for para 19(3) to have used the words 'real benefit'. That the benefit must be real goes without saying. Similarly, I do not think that the standard would be any higher if the words 'material benefit' had been used. The benefit must be direct, personal and material to the individual or to a member of the individual's family. The elimination of a theoretical or hypothetical risk that an individual might at some future time form part of a class that could be affected by a public law wrong that the relevant judicial review is seeking to address would not, in my view, normally be a sufficient benefit for purposes of para 19(3). But ultimately it is a fact-sensitive judgment. I can envisage an exceptional case where the elimination of a sufficiently grave and imminent risk threatening the applicant or a member of the applicant's family might be a sufficient benefit for purposes of para 19(3). This, however, is not such a case. . . . On the facts of this case, what Ms Ward is seeking to do is to bring a representative action. Her status as a resident gives her the standing to bring a Section 66 Challenge against the PSPO. But civil legal aid for a representative action is now excluded by para 19(3) of Part 1 of Schedule 1. Accordingly, in making the Decision the Director was not wrong to the extent that he relied on the ground that the Section 66 Challenge did not have the potential to produce a benefit for Ms Ward or a member of her family in the sense required by para 19(3), and therefore this ground of the claim does not succeed."—*Liberty, R (On the Application Of) v Director of Legal Aid Casework* [2019] EWHC 1532 (Admin).

Stat. Def. ("means—(a) any benefit, whether or not in money or other property and whether temporary or permanent, and (b) any opportunity to obtain a benefit"), Act 2018 Civil Liability Act 2018 s.1.

BINGO. "Bingo is a gambling game of remarkable simplicity and enduring popularity, at least in its on-line form. It continues to be played in a decreasing number of bingo halls. In the bingo hall version, the players pay a fixed fee to participate not in a single game but in a session of several games lasting for about two hours in total. Although there are several variants, each game generally involves the players having pre-printed or electronic cards containing columns of numbers. A caller will draw and announce random numbers and the players will, over time, mark off these numbers, if they appear on his or her card. The end of a game occurs when one of the players has marked off all of his or her numbers. That player will receive a cash prize."—*Revenue and Customs Against KE Entertainments Ltd* [2018] Scot CS CSIH 78.

BIOGAS PRODUCTION PLANT. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

BIOMETRIC DATA. Stat. Def., Data Protection Act 2018 s.205.

BIRTH AND ADOPTION GRANT. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

BLACK CARBON. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

BLIND OR PARTIALLY SIGHTED. "The premise for parliamentary elections under the Representation of the People Act 1983 ('the RPA 83') is that votes are cast by making a mark on a paper ballot. The issue in this litigation concerns the extent of the steps available under the RPA 83 to accommodate the needs of blind and partially-sighted voters.... The reference to 'blind or partially-sighted' is, as I see it, intended to cover all persons who because of a defect of sight are unable to complete a ballot paper without assistance. The words 'partially-sighted' are apt to cover a range of persons, including those who like the Claimant, have very little ability to see at all."—*Andrews, R (On the Application Of) v Minister for the Cabinet Office* [2019] EWHC 1126 (Admin).

BOVINE ANIMAL. Stat. Def. ("includes bison and buffalo (including water buffalo)"), Transmissible Spongiform Encephalopathies (England) Regulations 2018 reg.2.

BRANDED MEDICINE. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

BUILDING. Stat. Def. ("includes a structure or erection, and a reference to a building includes a reference to part of a building"), Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

BUILT UPON. "The sole issue is whether or not these lands are 'built upon', and therefore are excluded from the right of pre-emption granted by section 128. Neither counsel was able to put forward any evidence, historical or otherwise, to explain these three exceptions to the right of pre-emption under section 128. Mr Humphreys QC tentatively suggested that most land acquired by the railways would have been agricultural. It would have been too demanding to offer superfluous land back to every householder in a town. But that does not explain the exceptions for 'land for building purposes' or 'lands built upon' which may well have singular owners. Mr Dunlop suggested that the right to pre-emption did not apply to lands built upon because of the capital investment that had been expended. But this does not necessarily apply to lands within a town and certainly not to 'land for building purposes'. In any event, any party seeking to acquire any lands 'built upon' would have to pay the market price which will normally reflect the capital investment of the promoter. Both counsel agreed that the relevant legal authorities do not provide any reason as to why 'lands built upon' had been excluded from the right of pre-emption under section 128.

[48] The Oxford English Dictionary defines build as 'construct (something, typically something large) by putting parts of material together over a period of time'. The word comes from the old English 'bydlan' which is derived from 'dwelling' which is of Germanic origin.... There are certain cases in which it will be obvious whether or not the land is 'built upon'. It should also be clear that a lake which has been created naturally by the damming of a river could never be described as land which has been 'built upon'. What the position is when the lake is created artificially by damming a valley and impounding the river(s) depends on all the circumstances of the construction. The answer to the question as to whether or not it is land 'built upon'

must necessarily be fact specific. For example Turnberry golf course was used as an airport during the Second World War. It had a control tower and aeroplanes landed on what previously were the fairways of the golf course. Although the land was being used as an airport, it could never be described as land which had been 'built upon'. Belfast City Airport, in its present situation comprises, a main airport building with runways which have been constructed in tarmac on the ground. There is no difficulty in saying that Turnberry golf course as used during the war was not 'built upon' even though it was being used as an airport and there was a control tower. Further, there is no difficulty in saying that Belfast City Airport as it is presently constituted, is land which it is 'built upon' given the construction of the runways and buildings on the airport land.

I had the opportunity of visiting Portavo reservoir and of inspecting the works which had been constructed upon the reservoir lands. I also was able to take into account the fact that some of those structures are necessarily subterranean. I do not consider that what I observed could be considered by any reasonable observer to be lands which were 'built upon'. I do not consider a manmade lake together with the buildings which I observed had been constructed thereon, and which occupy a very small percentage indeed of the total land space together with the underground works, are sufficient to allow NIW to claim that the lands are 'built upon' and excluded from the pre-emption obligation under section 128. If I was in any doubt as to whether the pre-emption obligation under section 128 extended to the reservoir lands, which I am not, and there was an ambiguity, then this should be construed against NIW."—*Portavo Estates Ltd v Northern Ireland Water* [2017] NICh 2.

BURDEN. Stat. Def., Legislative Reform Measure 2018 s.1.

BUSINESS. "The expression 'business' is in common use to signify the economic activity carried on by a person together with the assets used in carrying on that activity, but the expression covers a collection of concepts. This can best be illustrated by considering the sale of a 'business'. The sale will usually include the assets that are used to carry on the business. These will include premises or land, such as a shop or workshop or factory. In the case of a farming business, the farm and farm steading, together with any other structures built on the land, will fall into this category. Moveable assets will also be included, such as plant and machinery (in so far as it does not become a fixture attached to the premises), raw materials and stock in trade. In the case of a farming business, this would include elements such as seeds, fertilizers, harvested crops and livestock. A third category of assets comprises what is known in Scots law as incorporeal property and to economists and accountants as intangible property. In the case of a business, these will usually be a set of contractual rights of various natures, notably debts due to the person carrying on the business, and they might also include claims against third parties. [49] Apart from the foregoing categories of asset, the sale of a 'business' is likely to include the goodwill of the business, if it has marketable goodwill."—*McMaster, Petition of Against the Scottish Ministers* [2018] ScotCS CSIH 40.

Stat. Def. ("includes any trade or profession"), Data Protection (Charges and Information) Regulations 2018 reg.1.

BUSINESS DAY. Stat. Def., Housing Administration (England and Wales) Rules 2018 r.1.3.

BUSINESS IMPACT TARGET. A target for the Government in respect of the economic impact on business activities of qualifying regulatory provisions, i.e.,

statutory provisions which impose or amend regulatory requirements, standards or conditions, set or amend standards, or amend guidance, which are expected to come into force or cease to be in force between the formation of that Government and the next general election (Small Business, Enterprise and Employment Act 2015 ss.21, 22). The activities of both businesses and voluntary or community bodies are covered by this target, but not those of the public sector (s.27). The Secretary of State must publish the Government's business impact target within the first 12 months of a new Parliament, starting from the date of the Queen's speech (s.21, explanatory note para.195), along with an interim target for the first three years of the Parliament, the types of measures that will be scored against those targets, and the methodology for calculating the economic impact of the qualifying regulatory provisions. The Secretary of State must publish reports on the actual impact of those provisions and the extent to which the targets have been met at set times during a five-year Parliament (ss.23, 24). The Secretary of State must also appoint an independent verification body to verify the economic impact of the measures in the scope of the business impact target (s.25).

C

CANVASS OR SOLICIT. "There was no dispute, and there were no submissions, about the proper construction of the terms 'canvass' and 'solicit'. Both seem to me to require a positive act on the part of the covenantor to approach the named individuals with a view to persuading them or suggesting to them that they leave the employment of the covenantee and instead to work for, or with, the covenantor. It is clear as a matter of ordinary language that a person (A) does not canvass or solicit another person (B) merely because B approaches A and, as a result of that approach, A employs B. To 'canvass' or 'solicit', A must make the first move."—*Rush Hair Ltd v Gibson-Forbes* [2016] EWHC 2589 (QB).

CARRIER AIRCRAFT. Stat. Def., Space Industry Act 2018 s.2.

CASE LAW. See RETAINED CASE LAW; RETAINED DOMESTIC CASE LAW; RETAINED EU CASE LAW.

CAUSE OF ACTION. "The classic definition of 'cause of action' is that given by Lord Esher MR in *Read v Brown* (1888) 22 QBD 128, as follows: 'every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement of the Court'. That definition was approved and followed by the Court of Appeal in *Coburn v Colledge* [1897] QBD 702. Its substance was summarised in the following way by Lord Guest in *Central Electricity Board v Halifax Corporation* [1963] AC 785 at 806: 'The date when a cause of action accrues may be said to be the date on which the plaintiff would be able to issue a statement of claim capable of stating every existing fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to judgment.'"—*Doyle v PRA Group (UK) Ltd* [2019] EWCA Civ 12.

CHANCERY COURT OF YORK. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.9.

CHANNEL. See MAIN NAVIGABLE CHANNEL.

CHARGE. "It raises an important point of statutory construction in relation to the duty pursuant to s.165(1)(a) and s.165(4)(b) of the EA 2010 on the driver of a taxi which has been hired by or for a disabled person in a wheelchair 'not to make any additional charge for doing so'.... The researches of counsel have not uncovered any prior authority on the proper construction of s.165(4)(b). There is some brief statutory guidance which I will return to later. The issue before me is therefore a novel one. It is, as I have observed, a question of statutory construction.... The starting point is to note the precise language used in s.165(4)(b). The driver's duty is not 'to make any additional charge' as a result of being hired by or on behalf of a disabled person. In this phrase the word 'charge' is being used as a noun and not a verb. The online Oxford English Dictionary definition of 'charge' when used as a noun include 'a price asked for goods or services' and also 'a financial liability or commitment'... The first of these meanings supports, to an extent, Mr Taylor's submission that the point in time when a driver makes an additional charge can only be at the end of the journey

because it is then and only then that the precise fare can be ascertained, in other words, only is the price asked. On the other hand, the second definition supports Mr Patience's submission that in a taxi fitted with a taximeter the passenger's obligation is to pay whatever the meter shows at the end of journey, and so the moment the meter is switched on the passenger becomes financially liable for the fare, and it is thus at that point that the driver makes the charge. In my judgment it is the second meaning which is to be ascribed to the word 'charge' as used in s.165(4)(b), and a taxi driver makes a charge when he switches his taximeter on, and if he does this for a disabled passenger before the passenger and her wheelchair have been loaded into the taxi, there will be an additional charge and thus an offence under s.165(7) even if, for whatever reason, the driver never actually demands the fare.... Given my view that the word 'charge' as used in s.165(4)(b) is capable of more than one meaning, ie, it is ambiguous, I consider this statement by the Minister to be admissible under *Pepper v Hart* [1993] AC 593 because it is clear and discloses the mischief which s.36 (and now s.165) was and is aimed at. That is the need to ensure that taxi drivers carry disabled passengers and to provide criminal penalties if they fail to do so or fail to comply with the other duties which the section imposes upon them in order that disabled people have access to taxi services on terms which are not disadvantageous by reason of their disabilities. Against that background, it cannot have been Parliament's intention that the word 'charge' should be construed so that a taxi driver only becomes criminally liable for charging a disabled passenger more when he actually demands the additional fare at the conclusion of the journey. The example given by Mr Patience demonstrates why this is so. It would mean that an unscrupulous taxi driver would be able to avoid his duty to carry disabled passengers, and his duty to assist them if necessary, by quoting an inflated fare upon being flagged down, knowing that it will not be accepted and he will then be free to drive off in search of a non-disabled fare. Another example might be the dishonest driver who puts an additional charge on the meter hoping that the disabled customer does not spot it, but who does not demand the additional amount if the passenger does notice. If Mr Taylor's construction of s.165(4)(b) were correct, in neither scenario would the driver commit the offence under a s.165(7) because he would not have actually demanded the additional amount, and (in the first scenario) he would be able to avoid his statutory duty without consequence. The second scenario would deprive disabled people of significant protection. These would be absurd results and wholly inconsistent with the stated purpose of the section. In my judgment they are not something which Parliament could have intended. In my judgment there can be no doubt that no later than the time a taximeter is switched on at the point of hire, an actual financial liability or commitment is imposed on the passenger to pay the amount shown on the meter when the hiring is terminated, and it is therefore at that point that the charge is made for the purposes of s.165(4)(b). That is for the following reasons."—*McNutt v Transport for London* [2019] EWHC 365 (Admin).

CHARTER OF FUNDAMENTAL RIGHTS. Stat. Def., "the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg on 12 December 2007" (European Union (Withdrawal) Act 2018 s.20(1)).

CHEATING. "The principal issue on this appeal is whether a method of play called 'edge-sorting', which involves exploiting design irregularities on the backs of playing cards, results in cheating when playing Punto Banco, a variant of Baccarat. In Punto Banco, a single player plays against the casino or 'house' offering the game. The appellant, Mr Philip Ivey (hereafter Mr Ivey), a well-known professional gambler

from the United States, considers that it is lawful for skilful players such as him, known as 'advantage players', to use methods of play such as this. He contends that edge-sorting ought to be known to the casino and the casino could protect itself against it. It follows that when he admittedly used edge-sorting he subjectively did not have any dishonest intention and his play cannot therefore have amounted to cheating. The respondent casino, known as Crockfords Club (hereafter 'Crockfords'), say that they did not know about edge-sorting, and that it altered the odds against them unfairly.... It is common ground that there was an implied term in the parties' contract not to cheat. The meaning of cheating for this purpose is to be determined in accordance with section 42 of the 2005 Act. In my judgment, this section provides that a party may cheat within the meaning of this section without dishonesty or intention to deceive: depending on the circumstances it may be enough that he simply interferes with the process of the game. On that basis, the fact that the appellant did not regard himself as cheating is not determinative.

There is no doubt that the actions of Mr Ivey and Ms Sun interfered with the process by which Crockfords played the game of Punto Banco with Mr Ivey. It is for the court to determine whether the interference was of such a quality as to constitute cheating.

In my judgment it had that quality for the reasons given above, which reflect the reasons given by judge. In particular the actions which Mr Ivey took or caused to be taken had a substantial effect on the odds in the game and Crockfords were not aware of this at the relevant time. In these circumstances, no lower standard applied in this case because Mr Ivey was an advantage player who was in an adversarial position with the casino."—*Ivey v Genting Casinos UK Ltd (t/a Crockfords Club)* [2016] EWCA Civ 1093.

CHIEF OFFICER OF POLICE. Stat. Def., Stalking Protection Act 2019 s.14.

CHILD IN NEED. See Stewart, *R (On the Application Of) v Birmingham City Council* [2018] EWHC 61 (Admin).

CLOUD COMPUTING SERVICE. Stat. Def. ("a digital service that enables access to a scalable and elastic pool of shareable computing resources"), Network and Information Systems Regulations 2018 reg.1.

COEFFICENT OF PERFORMANCE. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

COLLATERAL. "A matter is collateral if it is something that stands apart from the main issue. As such it will not be immediately relevant to the main issue and therefore evidence of the collateral matter will not generally be admissible in an inquiry into the main issue."—*Appeal by Stated Case in the Cause (1) JS and (3) CS Against the Children's Reporter* [2016] ScotCS CSIH 74.

COLLEGE. See UNIVERSITY.

COLLEGE, SCHOOL OR HALL OF A UNIVERSITY. "The phrase 'college, school or hall of a university' has an obvious meaning in the context of UK universities as they operated in 1972. Both Oxford and Cambridge (to take the most obvious examples of universities which operate on a collegiate basis) have been organised for centuries on a federal system under which the colleges and private halls, although legally independent and self-governing, have provided the undergraduate and graduate students of the university and have assumed the primary responsibility for their tuition. The universities themselves are corporations now regulated by statute with their own separate legal identity and status. Their statutes govern such matters as admission to degrees, the giving of lectures and student discipline. The universities

remain responsible for the administration of their academic and research departments but operate in terms of governance through Congregation (in the case of Oxford) and the Regent House (in the case of Cambridge) which are made up of university officers, heads and fellows of the colleges; and other academic, research and administrative staff. In each case the governing body of the university has the power to amend its statutes and regulations and to determine policy issues affecting the operation of the university. The colleges and private halls are therefore an integral part of the structure of the university and their members make up the university's teaching staff and students. No student member of a college or hall is not a member of the university or takes a course of study which does not, if successful, lead to the conferment of a university degree. ... The word 'college' is derived from the Latin word 'collegium' meaning a partnership. It denotes a group of people organised as an institution usually (but not necessarily) in the field of education. The use by SAE Institute of the word 'college' to describe its Littlemore campus could not therefore be said to be a misuse of language, but whether it can properly be described as a college of MU is a different question which cannot in my view be answered simply by reference to a document under which the University agreed that SEL should be called an 'associate college' of MU or the fact that for a long time the two bodies have collaborated in the delivery of a limited range of degree courses leading to an MU qualification."—*SAE Education Ltd v Revenue And Customs* [2017] EWCA Civ 1116.

COMMERCIAL PRACTICE. "The submissions turn on the true meaning of 'commercial practice'.... The Directive is directed at, not commercial transactions as such, but at commercial practices. However, it is clear from the language of the relevant provisions that a commercial practice within the meaning of the Directive and 2008 Regulations may be constituted by or derived from a single act, omission or representation.... Indeed, the use of the words '(if any)' in the definition of commercial practice, and recital (13) to the Directive quoted at paragraph 8 above, indicates that there need not be a commercial transaction at all. There is nothing in the legislative language that suggests that, for there to be a proven commercial practice, it is necessary for a particular consumer to be involved in a particular transaction. The concept of 'commercial practice' is 'concerned with systems rather than individual transactions' (X Ltd at [23])... For those reasons, in my judgment, a commercial practice for the purposes of article 2(d) of the Directive (and thus regulation 2(1) of the 2008 Regulations) may be constituted by or derived from a test purchase made of a product (including a service) that is generally promoted to and intended for purchase by consumers, even where the purchaser may not himself be a consumer. Specifically, the giving to the test purchaser of an invoice or other document incorporating false information as to a main characteristic of the product (including the execution of a service) that would mislead the average consumer into paying for services that he has not received (which he would not otherwise have done) is a commercial practice which is a misleading action for the purposes of regulations 5 and 9 of the 2008 Regulations, being 'directly connected with the promotion, sale or supply of a product to... consumers'."—*Warwickshire County Council v Halfords Autocentres Ltd* [2018] EWHC 3007 (Admin).

COMMISSION OF REVIEW. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.19.

COMMODITY. "My starting point is that in interpreting a Directive and Regulations aimed at commercial agents, it is necessary to interpret 'commodities' in

its commercial sense, i.e. as it would be understood as such by commercial parties both as principals and agents. Commodities is a term often used in the commercial world of trade and finance in a particular sense, which is a narrower sense than the everyday use of the word. In everyday use it can cover almost all things which can be bought or sold; but in its commercial sense it is not synonymous with 'any tangible goods'. In the commercial world it includes, for example, oil and gas products, some precious and industrial metals, grain and other agricultural or raw foodstuffs such as coffee, sugar or pork bellies. Many are subject to futures and options trading, but not all.

A statutory definition is to be found in section 9A(9) of the Building Societies Act 1986, section 9A(1) of which prohibits building societies from acting as a market maker or trading in commodities, amongst other things. The definition is: '"commodity" means any produce of agriculture, forestry or fisheries, or any mineral, either in its natural state or having undergone only such processes as are necessary or customary to prepare the produce or mineral for the market.'

A similar form of wording is found in s. 11(2) of the Financial Services (Banking Reform) Act 2013 for the purposes of regulating certain proprietary trading, save that the subsection uses the words as an inclusive but not exclusive definition.

This is a useful starting point, provided agriculture is treated as wide enough to include animal farming. However in determining whether there is a sale on a commodity exchange or commodity market, it is not enough to inquire whether the goods in question are a commodity. The relevant question is whether the sale is of the goods as a commodity, and the sale is on 'the commodity market' or a commodity exchange. The focus must be on the manner and place of sale as well as the nature of the goods sold. Coffee beans bought by description in bulk are a recognised category of commodity sale. The same coffee beans sold in a packet in the supermarket are not. Commodity markets are limited to wholesale trading. Moreover not all wholesale purchases of goods which fall within the statutory definition identified above would be regarded by commercial men as trading in commodities. Billingsgate would not be regarded as a commodity market. The fact that some sales of raw materials falling within even the narrowest definition of commodities will not constitute commodity trading illustrates the need to focus on the nature of the sale process and not just the nature of the goods.

The concept of a commodity sale generally focusses on generic goods in bulk, goods which are indistinguishable in origin or features from other goods of the same type. But that is not always so. A sale afloat of a specific cargo of oil from a specific refinery would be regarded as a commodities sale. I was for a time attracted by a distinguishing criterion of whether goods were bought by description, sight unseen, as opposed to goods being subject to inspection. However this cannot be decisive. What are generally accepted as sales of commodities may have been subject to inspection by sampling, whether by the buyers or others. A grain broker who purchases a cargo of grain afloat with the benefit of inspection certificates would be regarded as making a purchase on the commodity market, as he would in an ex warehouse or FOB sale where the buyer had the power of inspection and rejection himself. Where generic goods are bought by description, that is a pointer towards their being bought as commodities, but the opportunity to inspect is not fatal to their being so."—*W Nagel (a firm) v Pluczenik Diamond Company NV* [2017] EWHC 1750 (Comm).

COMMON NAME. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

COMMUNICANT. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.95.

COMMUNICATION. Stat. Def., "in relation to a postal operator or postal service..., includes anything transmitted by a postal service", Investigatory Powers Act 2016 s.262(2).

COMMUNICATION SERVICE. Stat. Def. ("means a service enabling any of the following to be used—(a) a telephone other than a mobile telephone; (b) the internet; (c) cable television; (d) satellite television."), Tenant Fees Act 2019 s.28, Sch.1, para.11.

COMPELLING REASON. "In section 113 of the [Court Reform (Scotland) Act 2014] the words 'compelling reason' has a particular legal meaning. It does not merely mean compelling in the general sense. A starting point for what may be a compelling reason is an arguable material error of law. I am not persuaded that the Sheriff Appeal Court did make any error of law in this case and therefore the application for leave to appeal falls at the first hurdle."—*KS, Application for Leave to Appeal under Court Reform (Scotland) Act 2014* [2017] ScotCS CSIH 68.

COMPULSORY TICKET AREA. Stat. Def., Railways (Penalty Fares) Regulations 2018 reg.3.

COMPUTERISED MODEL. Stat. Def., Oil and Gas Authority (Offshore Petroleum) (Retention of Information and Samples) Regulations 2018 reg.1.

CONCERNS. "In my opinion the word 'concerns' has been carefully chosen by the drafters to be wide enough to encompass matters which are incidental or ancillary to the determination of a person's entitlement. Concern is defined in the Oxford dictionary as: 'to have relation or reference to; to refer to; relate to; to be about a connection or association with.' This is the meaning that the drafter intended and is the ordinary or natural meaning. It does not lead to an absurdity, in fact quite the opposite as it is common sense that the tribunal determines incidental matters such as whether it is an in country or out of country appeal."—*PW v The Secretary of State for The Home Department* [2017] ScotCS CSOH 47.

"An 'entitlement' is subtly different from a 'right'. The natural meaning of the latter is something inherent and existing. The natural meaning of an 'entitlement' is a benefit which is obtained or granted. Moreover, a decision which 'concerns' an entitlement appears to me naturally to include a decision whether to grant such an entitlement. That is precisely what the Secretary of State must do in such a case as this."—*Khan v Secretary of State for the Home Department* [2017] EWCA Civ 1755.

CONCERT. "Orchestral concert". Stat. Def., Corporation Tax Act 2009 s.1217PA as inserted by the Finance Act 2016 Sch.8 para.1.

CONDUCT. "In my opinion, on a proper construction of section 6(4) the word 'conduct' has its ordinary meaning of behaviour. The expression is wide enough to include an omission to act in breach of an obligation or duty. It is very difficult to see why it should be given a more restrictive meaning, particularly since it is clear that a broad view is to be taken to the construction of section 6(4) (*BP Exploration Co Ltd v Chevron*, per Lord Hope at paragraph 31, Lord Clyde at paragraphs 66–67, Lord Millet at paragraph 97; *Dryburgh v Scotts Media Tax Ltd*, supra, Opinion of the Court at paragraphs 18–20). Resort to the mischief rule points in the same direction. The mischief the error provision was intended to address is broad enough to encompass

error induced by a failure of the debtor to act in breach of an obligation or duty. A construction of 'conduct' which confined it to positive acts would fail to address part of the mischief. It would be very odd indeed if innocent action inducing error fell within the purview of the provision but reprehensible inaction in breach of duty did not. The equitable case for the latter circumstance being included within the scope of the mischief, and within the meaning of 'conduct', is as strong as the case for reprehensible action being included and stronger than the case for innocent action being included."—*Heather Capital Ltd v Levy & McRae* [2016] ScotCS CSOH 107.

"It seems that an employee's 'conduct' within the meaning of section 98(2)(b) of the Act can precipitate a fair dismissal even if it does not constitute a breach of her contract of employment: see the observation of Phillips J on behalf of the EAT in *Redbridge London Borough Council v Fishman* [1978] ICR 569, 574, adopted by the EAT in *Weston Recovery Services v Fisher* UKEAT/0062/10/ZT, [2010] UKEAT 0062_10_0710 at para 13."—*Reilly v Sandwell* [2018] UKSC 16.

CONFIDENTIAL PERSONAL RECORD. Stat. Def., Crime (Overseas Production Orders) Act 2019 s.3.

CONNECTED. See In Any Way Connected With.

CONSEQUENTIAL. "Whether a particular matter can be described as 'incidental', 'consequential' or 'supplementary' to the scheme sanctioned under section 111 is a fact sensitive enquiry. Accordingly, as with the potential second objection, the only question for me at this stage is whether the transfer of a part of BCSL's business is incapable of being so described. While the nature of the order sought is far removed from the nature of the orders made in earlier cases (save only that made in the JPM case), and it is much easier to describe the orders in those cases as 'incidental', 'consequential' or 'supplementary', I do not regard it as impossible to describe the transfer of BCSL's business as such in the context of this case. If (as I have assumed in relation to the second objection) BBI would be in practice unable to service the requirements of the transferring clients of BB unless BCSL's business was also transferred, then I consider then while it may be difficult to describe the order sought as 'incidental', it would not be a mis-use of language to describe it as 'consequential' or 'supplementary'."—*Barclays Bank Plc, Re* [2018] EWHC 2868 (Ch).

CONSIDERATION. "As will be seen, 'consideration' in article 2 means only some value given to the supplier in return for the goods or services by the person to whom they are supplied. It is this amount on which VAT is payable. It need not be full value or indeed bear any particular relation to the value of the goods or services supplied. By contrast, 'remuneration' has a broader meaning, and may be said to encapsulate the concept of carrying on an economic activity 'for the purposes of obtaining income therefrom on a continuing basis'. Those words appear in article 9(1) as qualifying only the exploitation of tangible or intangible property, but it is established that they apply generally to 'economic activity': *Landesantalt für Landwirtschaft v Götz* (Case C-408/06) [2007] ECR I-11295 at [18], Finland at [37]. It can readily be appreciated that goods or services may be supplied for 'consideration' without the supplier doing so as an economic activity or for 'remuneration'."—*Wakefield College v Revenue And Customs* [2018] EWCA Civ 952.

"8. The word 'consideration', which features in both articles 2(1)(c) and 73 of the Principal VAT Directive and section 5(2)(a) of the 1994 Act, does not in the VAT context refer to what might be deemed 'consideration' for the purposes of domestic contract law but has an autonomous EU-wide meaning (see e.g. Case 154/80

Staatssecretaris Van Financiën v Cooperatiëve Vereniging Cooperatiëve Aardappelen-bewaarplaats GA [1981] 3 CMLR 337 ('the Dutch potato case'), at paragraph 9 of the judgment of the Court of Justice). '[T]he concept of the supply of services effected for consideration within the meaning of art 2(1) of the Sixth Directive [i.e. the predecessor of the Principal VAT Directive] presupposes the existence of a direct link between the service provided and the consideration received' (Case 102/86 *Apple & Pear Development Council v Customs and Excise Commissioners* [1988] STC 221, at paragraph 12 of the Court of Justice's judgment; see also e.g. *Commission of the European Communities v Finland* [2009] ECR I-10605, at paragraph 45 of the Court of Justice's judgment). A supply of services is effected 'for consideration', and hence is taxable, 'only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient' (Case C-16/93 *Tolsma v Inspecteur der Omzetbelasting Leeuwarden* [1994] STC 509, at paragraph 14 of the Court of Justice's judgment; see also e.g. Case C-520/14 *Geemente Borsele v Staatssecretaris van Financiën* [2016] STC 1570, at paragraph 24 of the Court of Justice's judgment). 9. The authorities also show that 'consideration' is a 'subjective value' in the sense that 'the basis of assessment for the provision of services is the consideration actually received and not a value assessed according to objective criteria' (the Dutch potato case, at paragraph 13 of the judgment). In Case C-285/10 *Campsa Estaciones de Servicio SA v Administración del Estado* [2011] STC, the Court of Justice explained in paragraph 28 of its judgment: 'According to settled case law …, the taxable amount for the supply of goods or services for consideration is the consideration actually received for them by the taxable person. That consideration is thus the subjective value, that is to say, the value actually received, and not a value estimated according to objective criteria.'"—*National Car Parks Limited v The Commissioners for Her Majesty's Revenue and Customs* [2019] EWCA Civ 854.

CONSISTORY COURT. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.1.

CONSTRUCTION ESTABLISHMENT. Stat. Def., Industrial Training Levy (Construction Industry Training Board) Order 2018 art.5.

CONSTRUCTION INDUSTRY. Stat. Def., Industrial Training Levy (Construction Industry Training Board) Order 2018 art.2.

CONSUMER. "The reference to private consumption needs in Benincasa served to confirm and emphasise that there are 'end user' and 'private individual' elements inherent in the notion of 'consumer'. Therefore, although the contract in that case related, ultimately, to consumer goods (dental hygiene products), and although it was concluded by Mr Benincasa personally and not by a separate business vehicle of his (e.g. a limited company), his purpose in concluding the contract was a business purpose, viz. to trade as a supplier of those goods. He was not buying as an end user of dental hygiene products and so he was not contracting as a consumer. I do not accept Mr Bradley's contention, for Reliantco, that the ECJ/CJEU has glossed the definition of 'consumer' by emphasising, as it has, that: (1) it applies only to a 'private final consumer' not engaged in trade or professional activities; (2) a 'consumer' is an individual who is to be distinguished from an 'economic operator'; (3) the contract in question must be for the purpose of satisfying the individual's own needs in terms of private consumption. None of those, to my mind, glosses or refines the definitional

language of Article 17(1), treated as such in and since (at least) Shearson Lehman Hutton Inc, by which a 'consumer' is a private individual contracting as such, for their own purposes and not for the purpose of any business (trade or profession). The question is whether a private individual committing capital to speculative currency transactions in the hope of making investment gains is, or can be, a 'consumer' in that definition. Wealthy consumers are consumers nonetheless and the amounts involved in this case do not mean Ms Ang was not a consumer. For example, in Case C-585/08, *Pammer v Reederei Karl Schluter GmbH* and Case C-177/09, *Hotel Alpenhof GesmbH v Heller* [2010] ECR I-12527, contracts for an ocean cruise and an alpine holiday were held to be consumer contracts. Of course, going on a family holiday, even if it is a very expensive holiday, could not sensibly be thought of as a business venture. But I reject any notion that speculative investment, putting capital at risk in the hope of achieving an investment gain, must necessarily be a business activity, i.e. cannot ever be a consumer activity. In my judgment, the investment by a private individual of her personal surplus wealth (i.e. surplus to her immediate needs), in the hope of generating good returns (whether in the form of income on capital, capital growth, or a mix of the two), is not a business activity, generally speaking. It is a private consumption need, in the sense I believe intended by the ECJ in Benincasa, to invest such wealth with such an aim, i.e. that is an 'end user' purpose for a private individual and is not exclusively a business activity. That means, as was also Popplewell J's conclusion in *AMT v Marzillier*, that it will be a fact-specific issue in any given case whether a particular individual was indeed contracting as a private individual to satisfy that need, i.e. as a consumer, or was doing so for the purpose of an investment business of hers (existing or planned). The question is where, if at all, to draw the line. Take private equity investment made with a view to generating a return on capital (venture capitalism). I should have thought the making of such investments would be regarded, generally, as by nature a business activity; and no less so if for the venture capitalist in question that activity was not her primary occupation but a side-line through which to invest some or all of her wealth generated in some other way (e.g. out of earnings, inheritance or gifts). On the other hand, an individual shopping around the retail market for a better interest rate on a large lump sum she is happy to lock away for a year or two, because it is surplus to any shorter-term need for access to capital, or choosing with a view to a better return to invest in a FTSE 100 tracker fund instead, would surely be regarded as a consumer, applying faithfully all that the ECJ/CJEU has said on the point. I therefore agree, in general, with the observation of Popplewell J in *AMT v Marzillier* at [58], quoted at paragraph 40 above, although I would add this amplification, namely that the spread, regularity and value of investment activity cannot (I think) determine the issue, as that would replace the test of non-business purpose set by the language of the Brussels (Recast) (as it now is). It may be, on the facts of any given case, that widespread, regular and high-value trading will encourage a conclusion that the putative consumer was engaged in investing as a business, so that the contract in question had a business purpose. But that question of purpose is the question to be asked, and it must be considered upon all of the evidence available to the court and not by reference to any one part of that evidence in isolation."—*Ramona ANG v Reliantco Investments Ltd* [2019] EWHC 879 (Comm).

Stat. Def., Housing Administration (England and Wales) Rules 2018 r.1.3.

CONSUMER PRICE INDEX. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

CONTRACT ADMINISTRATOR. "The 'contract administrator' is not a distinct profession or expertise. It is a role played under standard form contracts which may be discharged by someone with the qualifications of an architect, engineer or quantity surveyor or indeed others. Mr Strutt's evidence, which I accept, was that the roles of project manager and contractor administrator could not be rigidly distinguished: the role of contract administrator was not a separate discipline and, when the project manager undertook the role of the contract administrator, the latter role was, in practice if not contractually, subsumed by the project manager role. . . . In the normal course, however, the obligations of the contract administrator would not, in themselves, render him liable in respect of defects in the contractor's works. He might be liable if he had a more onerous obligation to supervise or if a negligent failure to monitor or inspect had the consequence either that a defect that could have been identified and remedied was not, or where he overvalued work by failing to take account of defects."—*Russell v Stone (t/a PSP Consultants)* [2019] EWHC 831 (TCC).

CONTRACTED OUT SHORT-TERM HOLDING FACILITY. Stat. Def., Short-term Holding Facility Rules 2018 r.2.

CONVERSION. "First, the concept of 'conversion' is found in the overarching provisions of Class Q (not in Q.1) and it thereby introduces a discrete threshold issue such that if a development does not amount to a 'conversion' then it fails at the first hurdle and there is no need to delve into the exceptions in Q.1. It is thus a freestanding requirement that must be met irrespective of anything in Q.1. Mr Campbell responded to this by saying that Class Q must be read as a whole (including therefore Q.1) and read as such it provides a comprehensive definition of 'convert'. This was made up of (i) the requirement in Q that the starting point be an 'agricultural building' and the end point be a 'dwelling'; and (ii) the requirement in paragraph [105] NPPG that the existing building be sufficiently load-bearing. The requirement in Q.1(i) that the works be no more than 'reasonably necessary for the building to function as a dwelling house' was inherent in the first condition, i.e. the definition of a dwelling. It was argued that provided these conditions were met there was no more that was needed to be assessed by a decision maker in order to come to the conclusion that the works amounted to a conversion. The difficulty with this argument is that, on a fair construction of the drafting logic of the Order, the requirement that development amount to a 'conversion' is drafted as a separate requirement from these other conditions. In particular (as set out in the second point below) the concept of conversion has inherent limits which delineate it from a rebuild.

Second, a conversion is conceptually different to a 'rebuild' with (at the risk of being over-simplistic) the latter starting where the former finishes. Mr Campbell, for the Claimant, accepted that there was, as the Inspector found, a logical distinction between a conversion and a rebuild. As such he acknowledged that since Class Q referred to the concept of a conversion then it necessarily excluded rebuilds. To overcome this Mr Campbell argued that a 'rebuild' was limited to the development that occurred following a demolition and that it therefore did not apply to the present case which did not involve total demolition. In my view whilst I accept that a development following a demolition is a rebuild, I do not accept that this is where the divide lies. In my view it is a matter of legitimate planning judgment as to where the line is drawn. The test is one of substance, and not form-based upon a supposed but ultimately artificial clear bright line drawn at the point of demolition. And nor is it

inherent in 'agricultural building'. There will be numerous instances where the starting point (the 'agricultural building') might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild. In fact a more apt term than 'rebuild', which also encapsulates what the Inspector had in mind, might be 'fresh build' since rebuild seems to assume that the existing building is being 're' built in some way. In any event the nub of the point being made by the Inspector, in my view correctly, was that the works went a very long way beyond what might sensibly or reasonably be described as a conversion. The development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building. I should add that the position of the Claimant was that the challenge was as to law; if the argument in law was lost (and the Inspector did not therefore misdirect herself) then it was not argued that the Inspector acted irrationally in coming to the conclusion that the works were a rebuild/fresh build, and not a conversion.

Third, in relation to the argument that the conversion/rebuild distinctions is flawed because it is not defined and, in any event, interpreted in its normal dictionary sense covers the works in issue, there is in my judgment no need for the concept formally to be defined and the lack of a definition is not an indication that the concept lacks substantive meaning or content. The Order is directed towards a professional audience and the persons who have to make an assessment of whether works amounted to a conversion are experts, such as inspectors, who are well able to understand what the term means in a planning context (see by analogy *Bloor Homes v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) at paragraph [19(4)] in relation to policy guidance). The concept of 'conversion' must also be understood in its specific planning context. It is not a term that can be plucked without more directly from a dictionary. Indeed, Mr Campbell acknowledged the logic, in the planning context, of the distinction between a rebuild and a conversion."—*Hibbitt v Secretary of State for Communities and Local Government* [2016] EWHC 2853 (Admin).

CORROSIVE PRODUCT. Stat. Def., Offensive Weapons Act 2019 ss.1(11), (15), 6(9), and Sch.1.

COSTS. "Mr Bacon QC contended in his skeleton argument that Master James erred in relying on CPR 44 to construe 'costs' for the purposes of determining what costs were to be included in an interim statute bill under the Solicitors Act 1974. He submitted that the CPR is a self-contained statutory code and the definitions are not intended to have a wider application. Counsel pointed out that the concept of interim statute bills was recognised as far back as *Re Romer & Haslam* [1893] 2 QB 286 decided well before the CPR. Counsel drew attention to the transcript of the proceedings before Master James in which at page 33 line 7 Mr West, acting for the Defendant, made a similar submission. Further it was submitted by Mr Bacon QC that in this case the retainer provided for separate fee and disbursement invoices. Accordingly only one or other of those would be regarded as costs for a particular bill.... Further, for reasons set out in considering Ground 1, in my judgment the Master did not err in concluding that costs for the purposes of a statutory bill of costs in the Solicitors Act 1974 included disbursements where they are incurred."—*Richard Slade And Company Solicitors v Boodia* [2017] EWHC 2699 (QB).

COSTS OF AND INCIDENTAL TO. "As Judge Mosedale noted in her decision, the phrase 'costs of and incidental to' used in section 29 of the TCEA is also used in other contexts. The wording echoes that used in section 51(1) of the Senior Courts Act

1981 that 'the costs of and incidental to all proceedings' in, amongst other courts, the civil division of the Court of Appeal and the High Court, shall be in the discretion of the court. CPR 7.2(1) provides that 'proceedings are started when the court issues a claim form'. CPR 44.2(6)(d) provides expressly that the orders which the court may make under that rule include an order that a party must pay costs incurred before the proceedings have begun. The use of the 'costs of and incidental to' wording in section 29 cannot be accidental and must have been intended to mean that, subject to any relevant difference in the FTT Rules compared with the Civil Procedure Rules, the same costs are in general recoverable once rule 10(1)(b) comes into play as are recoverable on an assessment of costs following civil proceedings covered by section 51 SCA. Those costs do include some pre-action costs. In In *re Gibson's Settlement Trusts* [1981] Ch 179, Sir Robert Megarry V-C considered an appeal from the taxation of costs of an originating summons issued by trustees of a settlement trust. One issue raised was whether the taxing officer had been right to allow recovery of costs incurred before the summons was issued. The Vice-Chancellor held: i) on an order for taxation of costs, costs that would otherwise be recoverable are not to be disallowed by reason only that they were incurred before the action was brought; ii) where the costs order is for costs of and incidental to proceedings, the words 'incidental to' extend rather than reduce the ambit of the order; iii) it is important to identify the proceedings, in the sense not only of the correct stage of the proceedings but also by determining the nature of those proceedings: 'Only when it is seen what is being claimed can it be seen what the proceedings are to which the costs relate': page 186B."—*Distinctive Care Ltd v Revenue And Customs* [2019] EWCA Civ 1010.

COUNTRY. Stat. Def. ("includes any territory, region or other place", Sanctions and Anti-Money Laundering Act 2018 s.62.

COUNTY LINES. See CUCKOOING.

COURT. See RECORDS OF THE COURT.

COURT OF ECCLESIASTICAL CAUSES RESERVED. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.16.

COVENANT. See EASEMENT.

CRIMINAL CAUSE OR MATTER. "The phrase 'criminal cause or matter' has received extensive judicial consideration, although with one exception (to which I will come) not in the context of the JSA 2013. Judicial consideration of that phrase has arisen overwhelmingly during consideration of appeal routes from the High Court, currently laid down in Section 18 of the Senior Courts Act 1981, and previously under predecessor statutes. This forms an important context to the use and meaning of the critical phrase.... In my view, the review of authority on criminal appellate jurisdiction produces no real clarity. Even setting aside the reasoning of the Court of Appeal in *Re Green*, about which there is wide judicial scepticism, there is still a considerable variation in the width of judicial interpretation of the critical phrase. Having analysed the case law closely above, it seems to me unnecessary to say very much more on that point.... It seems to me the critical points are as follows. Firstly, the phrase may have different meanings in different statutes, as was recognised by the Court in *Guardian News 2*. Without any recourse to the Green Paper or Explanatory Notes, it is clear that in enacting the JSA 2013 Parliament was forging a solution, however controversial to some, to a wide range of proceedings, with the common thread that the proceedings could not be properly tried and the relevant evidence examined by the court, without closed material proceedings. I am fully alive to the problems attendant on such

proceedings, having attempted to articulate them in *F v Security Service* [2014] 1 WLR 1699, in particular at paragraphs 16 to 27. The most important problem is that, even if justice is being done, it cannot be seen to be being done....

The question of jurisdiction here only constitutes a live issue if it is shown there is material which would justify a declaration under s.6 of the 2013 Act. In such circumstances, the outcome of a PII application would be likely to remove important information from the Court's scrutiny. In my view, a likely further effect might well be that such a prosecutorial decision as this could not be effectively reviewed. If the relevant information is such that the fair and efficient trial of the case requires it to be considered, the case might be found to be untriable. I make no assumption as to which side would suffer and which would gain from such an outcome, but the outcome would likely be injustice to one party. That is an outcome to be avoided if it properly may.... Whether a declaration under Section 6 is made or not, whether the existing prosecutorial decision is upheld or remitted for review, and whatever the outcome of any such review, neither the Claimants nor the potential criminal defendant will be made privy to all of the information properly to be borne in mind by the prosecutor. Even setting aside legal professional privilege in relation to the historic decision, privilege arising in respect of any future prosecutorial decision, and the likely nature of security evidence here, means that is so.... However, here I agree with the Claimants' arguments, and it seems apt to say so, to make my reasoning clear. I am unable to see how a jurisdictional question can be decided in that way. Moreover, it is perfectly conceivable that, in related matters based on the same body of evidence, the DPP will decide to prosecute X and not to prosecute Y. If both decisions were challenged, could it really be the law that there could be no closed material proceedings in one challenge, while there was in the other? What if the victim's challenge to a negative decision succeeded following closed material proceedings, the matter was reviewed, and a change of mind prevailed: would the prospective criminal defendant then mounting a judicial review challenge be precluded from applications under Section 6 of the 2013 Act, if he were advised it was in his interests to make it? Once analysed, it seems to me that submission must fail."—*Belhaj v Director of Public Prosecutions (DPP)* [2017] EWHC 3056 (Admin).

"It has long been well known that, by reason of the provisions of s.18(1) of the Senior Courts Act 1981, this court has no jurisdiction to entertain an appeal from a judgment of the High Court 'in a criminal cause or matter'. These applications raise such a question and have to be considered in the light of the recent decision of the *Supreme Court in R (Belhaj) v Director of Public Prosecutions (No. 1)* [2018] 3 WLR 435.... It was common ground before us that if this court has no jurisdiction then, provided that a point of law of general public importance was first certified, the only route of appeal from the Divisional Court would have been or would be to the Supreme Court with permission granted either by the Divisional Court or by the Supreme Court itself.... As it seems to us, the following points, some overlapping, can be extracted from the decision of the Supreme Court in Belhaj: (1) For the purposes of s.18 of the Senior Courts Act 1981 a broad meaning is to be given to the phrase 'criminal cause or matter'. (2) The phrase applies with regard to any question raised in or with regard to proceedings, the subject matter of which is criminal, at whatever stage of the proceedings the question arises. (3) A decision on a matter which is collateral to the exercise of criminal jurisdiction will not necessarily be a decision in a 'criminal cause or matter'. (4) A 'matter' is wider than a 'cause.' (5) It is necessary to

focus on the nature and character of the underlying litigation in which the matter arises. (6) Judicial review is not to be regarded as inherently a civil proceeding. It depends on the subject matter whether or not it is so in any given case. . . . It is, in our view, accordingly salutary that there should not be an over-expansive interpretation of the phrase 'criminal cause or matter' and neither should there be an over-expansive approach to addressing the jurisdictional issue. After all, while some cases in the Divisional Court or Administrative Court are at a second level of judicial decision making – for example, appeals by way of case stated – many are not (the present case is an example). If a case is a criminal cause or matter then the only route of appeal is to the Supreme Court. Not only is that complex and expensive for litigants but also (and importantly) such an appeal is only possible if the court has first certified that a point of law of general public importance arises. That is a high bar to cross; many, indeed most, cases are not likely to be able to cross it. Moreover, for those relatively few cases which do raise an important point of law, the Supreme Court will then be required to deal with them without what one would hope would be considered the benefit of the decision and reasoning of a three judge constitution of the Court of Appeal. That said, it is clear enough on which side of the line this particular case falls. We agree with Ms Callaghan that the fact that Mr McAtee seeks a declaration of incompatibility cannot of itself mean that this case is not a criminal cause or matter. That would be a triumph of form over substance. The reality is that he is seeking such a declaration just because the aim is that, if the claim succeeds, it may thereafter result in an alteration to the licence provisions to which he is currently subject as part of his sentence. To focus solely on the relief sought in these proceedings also would involve a departure from the requirement, established by the authorities, to focus on the underlying subject matter in which such issue is raised. On one view, in fact, this judicial review claim could indeed be said itself to be a criminal 'cause'. But in any event, as Lord Sumption has explained, a 'matter' is something wider: a particular legal subject matter, although arising in a different proceeding. That assuredly can be said of the present case. It is simply not possible, in our judgment, to accept the argument that what is involved here is simply the administration of the sentence in the aftermath of the judicial decision in the Crown Court. It is not. The licence regime is a fundamental part of the sentence. It is just because a judge, by judicial decision taken in criminal proceedings in the Crown Court, has imposed a sentence of IPP that the licensing regime stipulated in s.31 A of the 1997 Act comes into play on an offender's release from custody. That is one aspect of the public protection and risk management which is inherent in such sentences. That licence continues to reflect a restriction on a defendant's liberty (albeit, of course, of a much more limited nature than custody). It is part of his sentence. It involves no decision by the executive or anyone else."—*McAtee, R (On the Application Of) v The Secretary of State for Justice* [2018] EWCA Civ 2851.

"As pointed out in McAtee (at paragraph 42) it is salutary that there should not be an over-expansive interpretation of the phrase 'criminal cause or matter'. In some (and perhaps most) cases – and the present is one – the position is clear-cut. In others, however, the position may be less obvious and will need to be determined by reference to the true subject-matter of the proceedings. But the point remains that where a decision of the High Court is in a criminal cause or matter the only route of appeal is, with leave, to the Supreme Court and in circumstances where a point of law of general public importance must be certified. Moreover, there is not even that potentiality of

seeking to appeal to the Supreme Court where the High Court has on a renewed application refused permission to apply for judicial review: cf. *re Poh* [1983] 1 WLR 2. Thus the appeal route, overall, is very significantly more restricted in this kind of case than is the position in civil matters."—*Thakrar v Crown Prosecution Service* [2019] EWCA Civ 874.

CROWN OF ACT OF STATE. See ACT OF STATE.

CUCKOOING. "The feature is known as 'cuckooing'. Sometimes it is known as 'running county lines'. The phenomenon represents a development or adaptation in the drug supply market. This is unsurprising as markets inevitably adapt and mutate with time.... In general terms, cuckooing refers to retail drug dealers from large metropolitan centres who travel to a smaller provincial community to sell drugs and who set themselves up in premises locally from which they will operate. Very frequently, they will latch onto a local dealer and take over his network, or onto a local user, and take over his address as a base for operations. Sometimes it is a combination of the two. Often large supplies of the drug will not be maintained in the provincial centre, but will be the subject of a re-supply operation from the metropolitan base. Sometimes a manager will be placed in the local area to run operations. Sometimes, as in the case of *Limby*, young people will be sent or taken to a local centre with sufficient supplies to make inroads into local networks. They may often be lightly convicted or unconvicted."—*Ajayi, R v* [2017] EWCA Crim 1011.

CULTURAL PROPERTY. Stat. Def., Cultural Property (Armed Conflicts) Act 2017 Sch.1 art.1.

CURRENT. "The ordinary meaning of the word 'current' does not encompass 'recent' or 'latest'. Mr Malik does not submit to the contrary. 'Has current ... leave' would appear to be referring to an existing state of affairs. He also accepts that the reference to completing a course 'within the applicant's last period of entry clearance, leave to enter or leave to remain', in the first of the two subsidiary criteria, provides a contrast with current entry clearance. At first blush it would appear that if his suggested interpretation of the word 'current' were right, it should have been used again for the purposes of consistency in subparagraph (i)."—*Behary, R. (on the application of) v Secretary of State for the Home Department* [2016] EWCA Civ 702.

D

DAMAGE. "In my view Hickinbottom J was right to conclude that the concept of 'damage' in article 2(2) of the Environmental Liability Directive, properly understood in its context, means a measurable deterioration in the existing state of the 'natural resource' or the 'natural resource service' in question. Both a measurable 'adverse change' in a 'natural resource' and a measurable 'impairment' of a 'natural resource service' involve a measurable deterioration to that 'natural resource' or 'natural resource service', as the case may be, from its 'baseline condition', as defined in article 2(14). Where the 'impairment of a natural resource service' is concerned, this concept of 'damage' applies, through the definition of 'natural resource services' in article 2(13), to any 'impairment' to 'the functions performed by a natural resource for the benefit of another natural resource or the public'. The concept of 'environmental damage' in article 2(1), where it concerns '(a) damage to protected species and natural habitats …' and '(b) 'water damage', imports and depends upon that concept of 'damage'. This, I believe, is the only interpretation of the concepts of 'damage' and 'environmental damage' compatible with the other relevant provisions of the Environmental Liability Directive."—*Seiont, Gwyrfai and Llyfni Anglers' Society v Natural Resources Wales* [2016] EWCA Civ 797.

DAMAGE CAUSED BY OR ARISING OUT OF THE USE OF THE VEHICEL ON A ROAD OR OTHER PUBLIC PLACE. "The appeal also raises questions about the meaning of the phrase, 'damage … caused by, or arising out of, the use of the vehicle on a road or other public place' in section 145 of the Road Traffic Act 1988, which defines the compulsory insurance requirements for the use of vehicles on such places.... Section 145(3)(a) was amended by the Motor Vehicles (Compulsory Insurance) Regulations 2000 (SI 2000/726) to add the words 'or other public place' which I have emphasised, in order to comply with the EU directives on motor insurance, which were later consolidated in the Directive which I describe below. Section 143 was amended in the same way. The amendments responded to the decision of the House of Lords in *Clarke v General Accident Fire* and *Life Assurance Corpn plc and Cutter v Eagle Star Insurance Co Ltd [1998] 1 WLR 1647*, which had held that a 'road' did not include a car park or other public place. The current wording of section 145(3) is to that extent implementing the relevant EU legislation....In summary, section 145(3) of the RTA must be interpreted as mandating third party motor insurance against liability in respect of death or bodily injury of a person or damage to property which is caused by or arises out of the use of the vehicle on a road or other public place. The relevant use occurs where a person uses or has the use of a vehicle on a road or public place, including where he or she parks an immobilised vehicle in such a place (as the English case law requires), and the relevant damage has to have arisen out of that use."—*R & S Pilling (t/a Phoenix Engineering) v UK Insurance Ltd* [2019] UKSC 16.

DATA CONCERNING HEALTH. Stat. Def., Data Protection Act 2018 s.205.

DATA PROTECTION LEGISLATION. Stat. Def., Data Protection Act 2018 s.3.

DATA SUBJECT. Stat. Def., Data Protection Act 2018 s.3.

DEALING IN IVORY. Stat. Def. Ivory Act 2018 s.1.

DEEP GEOTHERMAL. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

DEFAULT. "Secondly, the limb in the relevant legislation that deals with the 'infringement' by an employer – or, in the context of Regulation 30(4)(a), 'default' – is not naturally language that is concerned with compensation at all. Rather it concerns the nature or extent of the employer's unlawful action: for example, was it a one-off incident or was it a persistent practice?"—*Gomes v Higher Level Care Ltd* [2018] EWCA Civ 418.

DELIBERATE ABSENCE. "A person is 'deliberately absent' from his trial for the purpose of s.20(3) if he has been summoned as envisaged by article 4a(1).(a)(i), but is not actually made aware of the scheduled date and place of trial, but the manner in which he has been summoned does not violate article 6 ECHR. It is silent about the (a)(ii), and information about proceedings in the absence of the defendant. . . . The upshot of the authorities is quite clear. The relationship between the proper interpretation or application of 'deliberate absence' and the fair trial rights in article 6 ECHR is referred to in [34(ii)] of Cretu and [80-81] of Zagrean. S20 is intended to ensure that a person whose extradition is sought to serve a sentence after a conviction in his absence has the right to a retrial unless he has already been present at his trial or was properly notified of it and deliberately absented himself. Its purpose is to ensure that no one is surrendered where that would mean a breach of their fair trial rights. A person will be taken to have deliberately absented himself from his own trial where the fault was his own conduct in leading him to be unaware of its date and place, through deliberately putting it beyond the power of the prosecutor or court to inform him. This includes breaching his duty to notify them of his changes of address, deliberately ignoring the court process. In such circumstances, there is no need for the further questions in s.20(4) and onwards of the Extradition Act to be considered. Extradition follows. The decision in Zagrean confirms that the amendment to the Framework Decision in article 4a (i)(a) is an optional basis upon which the courts of the executing state may decide to refuse an extradition request. It is not an obligatory basis for refusal. However, the option to refuse extradition is removed if the condition in (a)(i) and (ii) are satisfied. The other conditions which have a similar effect are immaterial here. The conditions in article 4.1 (a)(i) are not met here. They envisage the defendant having actual knowledge of the date and place of trial. Mr Dziel did not have that knowledge. But all that that means is that there is no bar to the executing judicial authority refusing to extradite the requested person; the executing authority may still decide to extradite him if that would be compatible with article 6 ECHR, and in conformity with domestic law. The concept of a 'manifest lack of diligence' covers the concept of 'deliberate absence'; see [81] of Zagrean. It may go wider with its connotations of negligence and inefficiency; but that cannot broaden the meaning of 'deliberate absence' in the Extradition Act. 'A manifest lack of diligence' only illustrates one set of circumstances in which EU law permits but does not require the executing authority to order or to refuse to order the extradition of a person who was not present at his trial. S.20 is not in conflict with it; s.20 may lawfully restrict the Framework's discretion to order extradition; it cannot and does not permit a refusal of extradition, where the article 4a bars to the refusal of extradition bite. In any event,

this notion of a 'manifest lack of diligence' drawn from [51] of *Dworzecki*, may need to be read with [52] in which the CJEU discusses the availability in Poland of re-trial rights in the sort of circumstances which arose in that case. There is nothing in ECtHR jurisprudence to suggest that, where a defendant deliberately breaches his obligations to inform the authorities of his changes of address so as to prevent the authorities informing him of the date and place of trial, as here, a subsequent trial in his absence is in breach of article 6. That may be seen as a waiver of the right to attend his trial or as a deliberate decision not to exercise the right to attend his trial. In the light of the Jones decisions, Strasbourg jurisprudence does not require waiver with full knowledge of the rights foregone, namely that the trial could proceed in his absence, for a trial in the absence of the defendant to comply with article 6. Strasbourg only required that that outcome could be 'reasonably foreseen', which it elaborated no further, for a waiver to arise. What prevented a trial in the deliberate absence of Jones being 'reasonably foreseen' by him was that the state of the law in England and Wales on that point was not certain, as Lord Rodger had explained. If Jones did not waive his right to attend through his deliberate absconding, it was because it was not known by anyone that a trial could be held in his absence, rather than that his knowledge of procedural law was inadequate. It may be that the notion of what could be 'reasonably foreseen' was introduced to deal with the absence of an individual's actual knowledge of readily ascertainable procedural law. What could reasonably be foreseen is that which is reasonably foreseeable. Jones in Strasbourg is only an admissibility decision, and there are obvious limits to its usefulness on that ground alone. It does not deal with Lord Hoffmann's formulation that Jones deliberately chose not to attend, or to give adequate instructions to his lawyers, which is consistent with what Lords Hutton and Nolan said, even if the former did and the latter did not couch that as waiver. Nor did it deal with the formulation of Lord Bingham's, with which Lords Nolan and Hutton also agreed, that Jones's conduct 'could reasonably have been thought to show such complete indifference to what might happen in his absence as to support the finding of waiver.' This to my mind encompasses the notion that a person does not need to know which right he is waiving, if he shows that he does not care what it may be. 'Waiver' may be used in ECtHR jurisprudence without the precision which the House of Lords gave to it. The Jones decision in the House of Lords makes clear that deliberate absconding, in breach of bail obligations, can amount to a waiver of the right to attend, or as the deliberate exercise of a choice not to attend. It may also be found in a complete indifference to the procedures which may be followed in his absence, including trial itself. In none of those circumstances would trial breach article 6. In my view, and in the light of *Cretu and Zagrean*, the same approach applies to a failure to attend where the inability to do so is the result of a deliberate decision to breach an obligation to provide the authorities with information about changes of address, so as to prevent them actually notifying a defendant of the date and place of trial. That is how the District Judge has found Mr Dziel conducted himself and why. . . . I am satisfied that Mr Dziel was deliberately absent from his trial, that he waived his right to attend, or chose not to attend whenever it might be and whatever the consequences might be, and that there is no breach of article 6 in his extradition. He is entirely to blame for the position he is in and there was nothing unfair about his being tried in his absence."—*Dziel v District Court In Bydgoszcz, Poland* [2019] EWHC 351 (Admin).

DESIGNED OR ADAPTED FOR LIVING IN. "I consider that each part of each of the floors, as separately demised on the relevant date, is a separate set of premises within the meaning of the definition of 'flat'. Each part of each floor was given its separate identity not just by being enclosed by external walls and a dividing wall, but was given functional identity (as well as a precisely defined extent) by the terms of the new underleases. Each demised area was separated from the other by the dividing wall with doors in it. The doors were kept locked. They were there for the purpose only of facilitating the fitting out of the flats at a later time. The doors were not there so that each demised area could be used together with the other demised area, only for passing through one flat into the other. It was intended that, after completion of the fit out, the doors would be removed and the dividing wall fully built. Each demised area was in my judgment a separate set of premises on the relevant date and held as such by different tenants under the terms of the new occupational underleases.... In my judgment, the statutory definition of 'flat' in the 1993 Act, is, like the definition of 'house' in the 1967 Act, concerned with the purpose for which premises have been constructed or subsequently adapted. The relevant question is whether they have been constructed or adapted for use for the purposes of a dwelling or for use for some other purposes. If the latter, the separate set of premises so constructed or adapted is not a 'flat'. The test is not whether the separate set of premises has reached such an extent of fitting out, or remains in such good condition, that it can actually be used for living, eating and sleeping purposes on the relevant date. The Boss Holdings decision seems to me to be on point in this regard. Each of the four separate sets of premises in existence on the sixth and seventh floors have been constructed for use for residential purposes, even though their current condition precludes actual use for those purposes."—*Aldford House Freehold Ltd v Grosvenor (Mayfair) Estate* [2018] EWHC 3430 (Ch).

DETERMINATION. "I also think that the use of the word 'determination' elsewhere in the regime under sections 67 and 68 of RIPA tends to indicate that Parliament intended it to mean both a real determination and a purported determination (in the Anisminic sense of those terms): see section 68(4) and (5), where the word is used to refer to determinations in both senses."—*Privacy International, R. (on the application of) v Secretary of State for Foreign and Commonwealth Affairs* [2017] EWCA Civ 1868.

See FINAL DETERMINATION.

DEVOLVED AUTHORITIES. Stat. Def., Financial Guidance and Claims Act 2018 s.26.

DIFFERENCE IN VIEWS. "The questions raised in this appeal are as to the interpretation of the phrase 'a difference in views' for the purposes of Article 6(2) of Regulation 987/2009 [2009] OJ L284/1 (the 'implementing Regulation') and the nature of the evidence necessary to establish such a difference in views.... What does 'difference in views' mean for the purposes of Article 6 of the implementing Regulations? First, I should mention that it is common ground that the 'difference in views' to which Article 6 refers is as to competence and not eligibility. Secondly, it is accepted that the phrase and Article 6(2) must be construed against the relevant legislative background, being the basic Regulation and the implementing Regulation as a whole, and that Decision A1 is a proper aid to construction. Thirdly, it is not in dispute that it is necessary to approach the matter of interpretation purposively.... I agree with UT Judge Jacobs that if Article 6(2) is construed against that background

and care is taken to avoid a construction which would be unworkable or impracticable in reality, there is no need for a formal dispute in the sense of conflicting written decisions of the relevant institutions or Member States in order for a 'difference in views' to arise. It seems to me that if that had been the intention of the legislature, a different and a more restrictive phrase would have been used. Of course, a difference in views will have arisen in a case in which there are conflicting formal decisions in Member States about the competency of those States to pay benefits to an individual or in circumstances which apply to that individual claimant. That does not mean that it is necessary for there to be a formal decision of a Member State in order for there to be a 'difference of views'. It seems to me that the phrase, taken in context, is broad enough to cover a variety of circumstances ranging from conflicting formal, written decisions to the expression of different views as to the competence of the Member State by the State itself or an authorised representative of the relevant authority or institution."—*The Secretary of State for Work and Pensions v Fileccia* [2017] EWCA Civ 1907.

DIGITAL SERVICE. Stat. Def., Network and Information Systems Regulations 2018 reg.1.

DIGITAL SERVICE PROVIDER. Stat. Def., Network and Information Systems Regulations 2018 reg.1.

DIGITAL SERVICES. Stat. Def. ("means—(a) digital or information technology services, and (b) services relating to the administration of services within paragraph (a)."), Non-Domestic Rating (Preparation for Digital Services) Act 2019 s.1.

DIOCESAN BOARD OF FINANCE. Stat. Def., Endowments and Glebe Measure 1976 s.45.

DIRECT EU LEGISLATION. STAT. DEF.,

(a) "any EU regulation, EU decision or EU tertiary legislation, as it has effect in EU law immediately before exit day and so far as—
  (i) it is not an exempt EU instrument (for which see section 14(1) and Schedule 6),
  (ii) it is not an EU decision addressed only to a member State other than the United Kingdom, and
  (iii) its effect is not reproduced in an enactment to which section 2(1) applies,

(b) any Annex to the EEA agreement, as it has effect in EU law immediately before exit day and so far as—
  (i) it refers to, or contains adaptations of, anything falling within paragraph (a), and
  (ii) its effect is not reproduced in an enactment to which section 2(1) applies, or

(c) Protocol 1 to the EEA agreement (which contains horizontal adaptations that apply in relation to EU instruments referred to in the Annexes to that agreement), as it has effect in EU law immediately before exit day" (European Union (Withdrawal) Act 2018 s.20(1)).

DIRECT MARKETING. Stat. Def. ("the communication (by whatever means) of advertising or marketing material which is directed to particular individuals"), Financial Guidance and Claims Act 2018 s.26.

DIRECTORY. "In the past, Courts would ask themselves whether statutory requirements were 'mandatory' or 'directory'. Failure to comply with a requirement that was considered to be 'mandatory' would necessarily result in invalidity, while

non-compliance with a 'directory' requirement need not do so. However, in *R v Soneji* [2006] 1 AC 340 Lord Steyn said (at paragraph 23) that 'the rigid mandatory and directory distinction, and its many artificial refinements, have outlived their usefulness'. Instead, he said, 'the emphasis ought to be on the consequences of non-compliance, and posing the question whether Parliament can fairly be taken to have intended total invalidity'."—*Haworth, R. (On the Application Of) v Revenue And Customs* [2019] EWCA Civ 747.

DISBURSEMENT. "This appeal raises two principal issues of general importance in relation to a detailed assessment of solicitor and client costs pursuant to the Solicitors Act 1984 s.70 and CPR 46.9. The first issue concerns the proper meaning and application of CPR 46.9(3) as regards a success fee of 100% under a Conditional Fee Agreement ('the CFA'), which has been fixed at that level without any regard to the risk of failure of the claim. The second issue is whether the cost of the premium for an After The Event ('ATE') insurance policy was properly to be treated as a solicitor's disbursement or merely an entry in the client account.... It follows that a disbursement qualifies as a solicitors' disbursement if either (1) it is a payment which the solicitor is, as such, obliged to make whether or not put in funds by the client, such as court fees, counsel's fees, and witnesess' expenses, or (2) there is a custom of the profession that the particular disbursement is properly treated as included in the bill as a solicitors' disbursement.... The ATE insurance premium does not fall within either of those categories of solicitor's disbursements I have mentioned. It is a premium on a policy of insurance under which the client is the insured, pursuant to a contract of insurance made between the insurer and the client, in order to provide the client with funds to discharge costs which are not recovered from the opposing party and the client is liable to pay, whether those are costs of the other party or of the client's own solicitors. As the Court of Appeal observed in *Hollins v Russell* [2003] EWCA Civ 718, [2003] 1 WLR 2487 at [114], 'the client's liability to pay the [ATE] insurance premium arises from the contract of insurance, not from her contract with the legal representative'. In the present case, it was an insurance contract effected by HH as Ms Herbert's disclosed agent, and it specified Ms Herbert as 'the Policyholder'. An ATE insurance premium is not a payment which a solicitor is obliged, as such, to make irrespective of whether or not put in funds by the client, comparable to court fees and counsel's fees. It is not, technically speaking, a litigation expense at all: see *BNM v MGN Limited* [2017] EWCA Civ 1767 at [73]. Nor does the evidence establish that there is a custom of the solicitors' profession that an ATE insurance premium is to be treated as a solicitors' disbursement to be included in the bill submitted to the client. Ms Herbert relies on the practice of including the ATE insurance premium as a disbursement in the bill presented by the successful party to the losing party when success fees were recoverable before LASPO. I agree with Mr Bacon that this does not assist at all in establishing a custom that such a premium has customarily been treated as a solicitor's disbursement on solicitor and client assessments. There is no evidence at all before us as to such a custom. Nor did District Judge Bellamy refer to any such custom. He referred to Cook on Costs 2017 para. 2.12. We have not been shown that passage and it is not in our bundle of authorities. There is in the bundle an extract from para.2.13 of Cook on Costs 2018, although we were not referred to it. I assume it is the same as the paragraph in the earlier edition of Cook, to which the District Judge referred. It describes the principle in *Re Remnant* and gives examples of what are and

are not solicitor's disbursements consistent with that case. An ATE insurance premium is not one of them."—*Herbert v H H Law Ltd* [2019] EWCA Civ 527.

DISCOVERY. "The requirement for the conclusion to have 'newly appeared' is implicit in the statutory language 'discover'. The discovery must be of one of the matters set out in (a) to (c) of section 29(1). In the present case the officer must have newly discovered that an assessment to tax is insufficient. It is his or her new conclusion that the assessment is insufficient which can trigger a discovery assessment. A discovery assessment is not validly triggered because the officer has found a new reason for contending that an assessment is insufficient, or because he or she has decided to invoke a different mechanism for addressing an insufficiency in an assessment which he or she has previously concluded is present."—*Revenue and Customs Commissioners v Tooth* [2019] EWCA Civ 826.

DISHONESTY. "Dishonesty and want of integrity have long been treated as different (if overlapping) regulatory concepts. One can lack integrity without being dishonest, for example, see: *Bolton v Law Society* [1994] 1 WLR 512; [1994] 2 All ER 486; *Hoodless and Blackwell v Financial Services Authority* [2003] UKFTT FSM007; *SRA v Chan and Ali* (supra); *Scott v SRA* [2016] EWHC 1256 (Admin); *SRA v Wingate and Evans* [2016] EWHC 3455 (Admin); [2017] ACD 31; and *Newell-Austin v SRA* [2017] EWHC 411 (Admin); [2017] Med LR 194. There was no suggestion to the contrary before the Tribunal.... I proceed on the basis, both on the authorities and as a matter of principle, that, in the field of solicitors' regulation, the concepts of dishonesty and want of integrity are indeed separate and distinct. Want of integrity arises when, objectively judged, a solicitor fails to meet the high professional standards to be expected of a solicitor. It does not require the subjective element of conscious wrongdoing."—*Williams v Solicitors Regulation Authority* [2017] EWHC 1478 (Admin).

DISPOSITION. "In some circumstances, the term 'disposition' may, as Lord Neuberger demonstrates, embrace destruction or extinction of an interest. In the present context, one might also pray in aid academic descriptions of the wrongful alienation of trust property (even if it did not override any beneficial interest in such property) as a 'misapplication of trust assets' (see Snell's Equity (33rd ed), paras 30-013, 30-050 and 30-067) and a 'disposition ... in breach of trust' (see Swadling in Burrows, English Private Law (3rd ed), para 4.151). But the natural meaning of 'disposition' in the context of section 127 is in my view that it refers to a transfer by a disponor to a disponee of the relevant property (here the beneficial interest), not least when the section goes on to render any disposition 'void' unless the court otherwise orders."—*Akers v Samba Financial Group* [2017] UKSC 6.

"In the light of these comments, I consider that I am therefore free to hold that the release of contractual rights such as a debt by a creditor company in favour of the debtor constitutes a 'disposition' of the property of the company within the meaning of s.127. I accept that the word 'disposition' is not apt to cover mere effluxion of time of a wasting asset, such as a lease. Nor is it apt to cover deliberate consumption or waste by the company of its assets. But there is nothing in the section to require that the disposition of the company's property should be one by which the same identifiable property should leave the ownership of the company and become the identifiable property of another person."—*Officeserve Technologies Ltd v Anthony-Mike* [2017] EWHC 1920 (Ch).

DISPROPORTIONATE. "At para.21 Edis J emphasised that citations from Waya expressly say that the exercise under section 6(5) is not the same exercise as the general discretion to avoid hardship. The word 'disproportionate', used by Parliament in the amendment to section 6(5) of the 2002 Act, has in UK domestic law 'a particular meaning." He continued: "In this context it means that the order must be proportionate to the achievement of the statutory aim … in almost all cases an order made in accordance with the provisions of the Act will satisfy that test. In some entirely different situations identified in the authorities cited in *R v Johnson (Beverley)* that may produce disproportionality. In the type of case considered in *R v Johnson (Beverley)* at para.31 we would accept that there may be some exceptional cases where the Court is affirmatively satisfied on evidence which it is able to accept that making such an order will not recover the proceeds of crime and will simply lead to a sentence of imprisonment being served which the defendant in question can do nothing about. The limit on the utility of a certificate of inadequacy under section 23 of the 2002 Act … is relevant here, but it must be recalled that that limit reflects the will of Parliament and there is no warrant for creating a discretion to abrogate it. In such a case, the order may on those grounds be held to be disproportionate. *R v Johnson (Beverley)* itself was not such a case. A court making a confiscation order will treat protestations that the case before it is such a case with scepticism and will require the clearest, most complete and unassailable evidence before avoiding the usual statutory order on this ground. This is because, necessarily, the court is dealing with criminals whose mere assertion is unlikely to carry much weight. The ease with which criminal property may be concealed by being passed to others was emphasised in the judgment of the Court in *R v Johnson (Beverley)* and requires such an approach to the facts.".—*Morrison, R. v* [2019] EWCA Crim 351.

DISSIPATION. "I was not addressed on the meaning of dissipation. The pursuer simply asserted that the defender had dissipated funds representing matrimonial property. There is no statutory definition of 'dissipation', which suggests its ordinary meaning 'to squander' or 'to waste' is to be applied. The phrase in which that word appears in section 10(6)(c) is 'destruction, dissipation or alienation of property'. Those other words ('destruction' or 'alienation') colour the meaning of 'dissipation'. In my view, section 10(6) is to enable account to be taken of an intentional or dissolute diminution, by one of these means, of the matrimonial commonwealth and constituting such diminution other than by way of ordinary or bona fides dealings. Applying its ordinary meaning, 'dissipation' is suggestive of a waste or loss of matrimonial funds which cannot be traced or which is not represented by a replacement asset. Excessive spending grossly out of proportion to the resources within the matrimonial commonwealth or monies lost by gambling might be examples of 'dissipation'.

[46] If that understanding is correct, 'dissipation' in section 15(6) is unlikely to include inter vivos intergenerational gifts or those made for the purposes of tax planning. What the whole evidence discloses is a person of wealth passing on some of that wealth, in a way intended to be tax efficient, to his children. Given the familial context, the usual presumption against donation does not apply but rather such a payment is presumptively a gift made *ex pietate* or out of a sense of natural obligation, such as that owed by a parent to a child: *Malcolm v Campbell* (1889) 17 R 255."—*EP or G v GG* [2016] ScotCS CSOH 32.

DOCUMENT. Stat. Def. ("includes a written notice or statement or anything else in writing capable of being delivered to a recipient"), Housing Administration (England and Wales) Rules 2018 r.1.3.

DOMESTIC ABUSE. Stat. Def., Housing Act 1985 s.81B(2C) inserted by Secure Tenancies (Victims of Domestic Abuse) Act 2018 s.1.

DOMESTIC LAW. Stat. Def., European Union (Withdrawal) Act 2018 s.20(1).

DOMESTIC PREMISES. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

DOWNLINK FREQUENCIES. Stat. Def., Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2.

DRAFT. "Though initially it was suggested by the Applicant on paper that it was a factual error to describe a cheque drawn by the Halifax on its own account as a 'draft' I do not accept that this was materially false: a cheque drawn on a branch suspense account by a building society is to be treated in every respect in a similar way to a cheque drawn by a bank upon its own funds. The latter describes a 'bankers draft'. That description was entirely appropriate for a cheque (or draft) such as that exhibited in the present case."—*Coghlan v Bailey* [2017] EWHC 570 (QB).

DRILLING. "I first consider whether there is a 'natural' interpretation of the words 'commencement of drilling'. I find that there is and it is the physical penetration of the seabed, i.e. spudding. This is to be distinguished from preparations for drilling. Drilling is itself not a momentary process and so it is perfectly sensible to speak of when drilling starts, in the spudding sense, and when it stops. That is the sense in which one would define drilling the road or the drilling of one's teeth by a dentist. I further find that 'commencement' naturally means the beginning of drilling, not the beginning of preparations for drilling."—*Vitol E&P Ltd v Africa Oil and Gas Corp* [2016] EWHC 1677 (Comm).

DRINK. "Soft drink". Stat. Def., Finance Act 2017 s.26.

DUE REGARD. "But I am equally wholly unpersuaded that there is in reality any material difference between the obligations to have regard and to have due regard. Merely to have regard in the sense that the existence of the statutory requirements is recognised is never likely to suffice, albeit much will turn on the nature of the matters to which regard must be had. In s.1C it is a specific need to reduce inequalities so that the defendant is obliged to show that that need is recognised and that what is proposed does not in his view at the very least cause an increase in such inequalities. All that 'due' adds in my view is a specific recognition that the effect of the decision on the specified matters must be properly taken into account. It could indeed be argued that 'due' does not strengthen but rather weakens in that it recognises that there may be circumstances in which regard is not needed. But it seems to me in any event that the argument was a barren one having regard to the nature of the obligation in s.1C."—*Pharmaceutical Services Negotiating Committee, R. (on the application of) v Secretary of State for Health* [2017] EWHC 1147 (Admin).

DURABLE MEDIUM. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

DURATION. "We need not be pinned to a specific definition, but I agree that 'duration' connotes the length of a period of time. It seems to me to follow in the ordinary case that the period in question should be continuous, . . ."—*Kocur v Angard Staffing Solutions Ltd* [2019] EWCA Civ 1185.

DWELLING. "Second, whilst the word 'dwelling' is not defined in the regulations, and I eschew any attempt to define it, the concept of a dwelling is not apt to describe the circumstances of a person who is compulsorily detained in an institution. Some colour is gained from the reference in regulations 3(2)(b) to 'the household in the dwelling'. Whilst not all dwellings contain a 'household', for a person may dwell alone, the concept of a dwelling in the regulations is clearly that of a social unit which may include a household. The shared room of a detained person does not, and cannot."—*Hussein v Secretary of State for the Home Department* [2018] EWHC 213 (Admin).

E

EARNINGS. "i) For the purposes of a child support maintenance assessment, the scope of self-employed earnings is the same as it is for the assessment of welfare benefits and income tax. That is unsurprising given that the definition used in the child support scheme is transposed from the Social Security Contributions and Benefits Act 1992, and is in terms of 'taxable income'.

ii) It has been established since at least 1925 that winnings from gambling are generally excluded from the scope of self-employed earnings for the purposes of income tax. The fact that an individual is a 'professional' gambler, who has no other income and relies upon gambling for a living, does not of itself mean that he is 'gainfully employed' as a 'self-employed earner' for the purposes of liability to income tax; nor does the regularity, sophistication or success of his gambling, or his employment of a system that (at least in his own belief or aspiration) will result in his winnings exceeding his losses. A policy reason for HM Revenue and Customs, with the support of the Secretary of State for Work and Pensions, not wishing to tax winnings from gambling is not hard to identify: if such winnings were taxable as self-employed earnings, then gambling losses could be set off against other taxable profits or gains, possibly to the point at which the taxpayer might be entitled to claim social welfare benefits (see *Hakki* at [9]), an outcome which might understandably be regarded as unacceptable in policy terms.

iii) As gambling winnings are not generally taxable as self-employed earnings, neither are they generally regarded as self-employed earnings for the purposes of the assessment of welfare benefits or of a child support maintenance assessment.

iv) Such winnings are only self-employed earnings for any of these purposes where they are an adjunct to a trade or profession in which the individual is engaged, e.g. where the individual makes his winnings as a dealer at a gambling club which he owns (*Burdge v Pyne*), or where a poker player receives a fee for regularly appearing on television to advise the audience as to how to play poker and makes winnings from other people participating in that programme (see *Hakki* at [17]). But, without such an association, as a matter of law a gambler's winnings cannot amount to profits or gains arising from a trade, profession or employment, and cannot be within the scope of the self-employed earnings for the purposes of the child support scheme."—*French v The Secretary of State for Work and Pensions* [2018] EWCA Civ 470.

"The underlying social policy which that provision no doubt reflects is that it was considered that a person's pension should be insulated from the possibility of an attachment of earnings order being made against it. If the District Judge were right and it is possible for the billing authority to go by way of the County Court to obtain a judgment in its favour to reflect the liability to pay council tax, and then to obtain an attachment of earnings order within the meaning of the 1971 Act, it would be able to obtain such an order in respect of a person's pension. In my view, that would be contrary to the underlying policy behind the more limited definition of 'earnings'

which is to be found in the 1992 Regulations. In that sense it would be to enable the billing authority to bypass the purpose of the legislation read as a whole."—*Powys County Council v Hurst* [2018] EWHC 1684 (Admin).

EASEMENT. "It is clear law (and counsel for the appellant did not dispute) that clauses in a deed which conveys property can be construed as a grant of an easement even though they are framed expressly in terms as a covenant and even though the word 'covenant' is used (see e.g. *Rowbotham v Wilson* [1843-60] All ER Rep 601, 603, and *Russell v Watts* (1885) 10 App Cas 590). Therefore the fact that a clause uses the word 'covenant' does not mean it only takes effect as a covenant and cannot do so as a grant. Moreover, as explained by Diplock LJ in *Jones v Price*, the decision in *Austerberry* is concerned with the inability of provisions which are covenants as distinct from grants, to run with the land. Diplock LJ specifically drew the distinction between a grant and a covenant when he distinguished *Austerberry*. His judgment was that something which is a grant does not fall foul of *Austerberry*. It seems to me therefore that it follows that in a case in which the provision is construed as a grant, *Austerberry* is irrelevant."—*Churston Golf Club v Haddock* [2018] EWHC 347 (Ch).

"The essence of an easement is that it is a species of property right, appurtenant to land, which confers rights over neighbouring land. The two parcels of land are traditionally, and helpfully, called the dominant tenement and the servient tenement. The effect of the rights being proprietary in nature is that they 'run with the land' both for the benefit of the successive owners of the dominant tenement, and by way of burden upon the successive owners of the servient tenement. By contrast merely personal rights do not generally have those characteristics. Although owing much to the Roman law doctrine of servitudes, easements have in English law acquired an independent jurisprudence of their own, the essentials of which have been settled for many years, even if the uses of land during the same period have not stood still . . .. In my view this court should affirm the lead given by the principled analysis of the Court of Appeal in In *re Ellenborough Park*, by a clear statement that the grant of purely recreational (including sporting) rights over land which genuinely accommodate adjacent land may be the subject matter of an easement, provided always that they satisfy the four well-settled conditions which I have described. Where the actual or intended use of the dominant tenement is itself recreational, as will generally be the case for holiday timeshare developments, the accommodation condition will generally be satisfied. Whether the other conditions, and in particular the components of the fourth condition, will be satisfied will be a question of fact in each case. Whatever may have been the attitude in the past to 'mere recreation or amusement', recreational and sporting activity of the type exemplified by the facilities at Broome Park is so clearly a beneficial part of modern life that the common law should support structures which promote and encourage it, rather than treat it as devoid of practical utility or benefit."—*Regency Villas Title Ltd v Diamond Resorts (Europe) Ltd* [2018] UKSC 57.

ECCLESIASTICAL LEGISLATION. Stat. Def., Legislative Reform Measure 2018 s.1.

ECONOMIC RESOURCES. Stat. Def., Sanctions and Anti-Money Laundering Act 2018 s.60.

ECONOMY, EFFICIENCY AND EFFECTIVENESS. "What does the expression 'in the interests of economy, efficiency and effectiveness' mean? In particular, in order to show that a proposal is 'in the interests of economy, efficiency and effectiveness' within section 4A(5) of the Fire and Rescue Services Act 2004, is it

necessary to show that it is in the interest of each of those objectives, or can those three matters, the '3Es', be considered 'in the round'? That is the primary question raised by these proceedings.... However, in my judgment, the meaning of the expression is clear; the proposal must be shown to be in the interests of economy and of efficiency and of effectiveness. It follows that, whilst the expression must be considered as a whole, the Act requires that individual consideration is given by the Secretary of State to each of the 3Es.... The expression 'in the interests of economy, efficiency and effectiveness' does require consideration of each of the Es. But it does not demand proof that the proposal will necessarily result in some overall savings to the public purse. 'Economy' has a broader meaning than that; in my judgment, it means careful management of available resources or, in other words, keeping expenditure as low as possible consistent with achieving the objective in view."—*Shropshire And Wrekin Fire Authority, R (On the Application Of) v The Secretary of State for the Home Department* [2019] EWHC 1967 (Admin).

ELECTRONIC DATA. Stat. Def. ("means data stored electronically"), Crime (Overseas Production Orders) Act 2019 s.3.

ELEPHANT. Stat. Def. Ivory Act 2018 s.37(8).

EMISSION. Stat. Def. ("the release of a substance from a point or diffuse source into the atmosphere"), National Emission Ceilings Regulations 2018 reg.2.

EMOLUMENTS. Stat. Def. ("means—(i) salaries, fees and wages excluding fees which are paid to a company director who is remunerated solely by fees; (ii) any gratuity or other profit or incidental benefit of any kind obtained by an employee, if it is money or money's worth, other than pensions contributions; (iii) anything else that constitutes, or is intended to constitute, earnings of the relevant employment"), Industrial Training Levy (Construction Industry Training Board) Order 2018 art.2.

EMPLOYEE. "I do not think that in ordinary language an individual such as Mr Arslan whose services are supplied to a solicitor's firm under a contract between the firm and the company which the individual owns and directs would naturally be described as an 'employee' of the firm, even if the firm has control over his work or exclusive control over his time for all or part of his working week."—*Solicitors Regulation Authority (SRA) v Solicitors Disciplinary Tribunal* [2016] EWHC 2862 (Admin).

EMPLOYER. Stat. Def., Industrial Training Levy (Construction Industry Training Board) Order 2018 art.3.

EMPLOYMENT. "For the purposes of UK taxation, section 4 of the Income Tax (Earnings and Pensions) Act 2003 ('the 2003 Act') contains a partial definition of 'employment'. It provides: 'In the employment income Parts 'employment' includes in particular— (a) any employment under a contract of service, (b) any employment under a contract of apprenticeship, and (c) any employment in the service of the Crown.' Since this is not an exhaustive definition, but only an inclusive one, I consider that the meaning of the word 'employment' has to be supplemented, where necessary, by the meaning of that word under the general law of England and Wales. This is expressly permitted by article 3 (2) of the treaty. Although the partial definition of 'employment' in the tax legislation prevails over the meaning of that word under the general law of England and Wales, where the definition is incomplete it is permissible to resort to other laws of the contracting state. For the purposes of the preliminary issue we must, I think, assume that Mr Fowler carried out his diving activities under a

contract of service. On that assumption, his activities fell within the express definition of 'employment'."—*Fowler v HM Revenue and Customs* [2018] EWCA Civ 2544.

ENACTMENT. "It is clear (for example from section 1 of the Interpretation Act and *Wakefield and District Light Railways Co v Wakefield Corporation* [1906] 2 KB 140, at 145), that the concept of an enactment, as used in section 17, is not limited to whole Acts, parts or even sections of an Act. Any provision, long or short, which achieves a distinct objective may be an enactment. In my view Mr Dowding's attempt to combine saving provisions with the provisions to which they are an exception or derogation as indivisible enactments is simply wrong in principle. To do so would deprive section 17(2) of much of its force. It applies to 'any reference' in one enactment to another enactment. A reference by way of saving or exception is in my view squarely within that framework."—*John Lyon's Charity v London Sephardi Trust* [2017] EWCA Civ 846.

Stat. Def., ("means an enactment whenever passed or made and includes—

(a) an enactment contained in any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under an Act,

(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,

(c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,

(d) an enactment contained in, or in an instrument made under, Northern Ireland legislation, and

(e) except in section 2 or where there is otherwise a contrary intention, any retained direct EU legislation")—European Union (Withdrawal) Act 2018 s.20(1).

Stat. Def., Space Industry Act 2018 s.69; Stat. Def., Data Protection Act 2018 s.205.

ENCLOSE. "In any event, however the phrase 'enclose or set apart' came to arrive in section 145 of the 1972 Act, given that, as a matter of ordinary language, 'enclosing' an area of land necessarily connotes putting some form of barrier round the whole of that area with a view to preventing access to and/or egress from it, in its full context, in my view, Parliament intended section 145 to give a power to the relevant local authority to exclude members of the public, e.g. those who do not have a ticket and have not paid, from that part."—*The Friends of Finsbury Park, R (on the application of) v Haringey London Borough Council* [2017] EWCA Civ 1831.

ENCOURAGEMENT. See INDIRECT ENCOURAGEMENT.

ENERGY CONTENT. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

ENERGY CROP. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

ENTITLEMENT. "In my view, not only does the context favour the Appellant's interpretation (for the reasons set out above) but that is the more natural meaning of the words. An 'entitlement' is subtly different from a 'right'. The natural meaning of the latter is something inherent and existing. The natural meaning of an 'entitlement' is a benefit which is obtained or granted. Moreover, a decision which "concerns" an entitlement appears to me naturally to include a decision whether to grant such an entitlement. That is precisely what the Secretary of State must do in such a case as this."—*Khan v Secretary of State for the Home Department* [2017] EWCA Civ 1755.

ENVIRONMENT. "The definition of 'environment' is to be given a broad meaning: see *Venn*, and *Lesoochranarske Zoskupenie VLK v Ministerstvo Zivotneho*

Prostredia Slovenskej Republiky (Case C-240/09) [2012] QB 606."—*Dowley, R. (on the application of) v Secretary of State for Communities and Local Government* [2016] EWHC 2618 (Admin).

EQUITABLE COMPENSATION. See *Interactive Technology Corporation Ltd v Ferster* [2017] EWHC 217 (Ch).

ESSENTIAL SERVICE. Stat. Def. ("a service which is essential for the maintenance of critical societal or economic activities"), Network and Information Systems Regulations 2018 reg.1.

ESTABLISHED PRESENCE. See CURRENT.

EU-DERIVED DOMESTIC LEGISLATION. Stat. Def., "means any enactment so far as—

(a) made under section 2(2) of, or paragraph 1A of Schedule 2 to, the European Communities Act 1972,

(b) passed or made, or operating, for a purpose mentioned in section 2(2)(a) or (b) of that Act,

(c) relating to anything—

(i) which falls within paragraph (a) or (b), or

(ii) (ii) to which section 3(1) or 4(1) applies, or

(d) relating otherwise to the EU or the EEA,

but does not include any enactment contained in the European Communities Act 1972"—but note that the definition is subject to section 5 and Schedule 1 (exceptions to savings and incorporation) ((European Union (Withdrawal) Act 2018 s.1).

EU DIRECTIVE. Stat. Def., "a directive within the meaning of Article 288 of the Treaty on the Functioning of the European Union" (European Union (Withdrawal) Act 2018 s.20(1)).

EU ENTITY. Stat. Def., "an EU institution or any office, body or agency of the EU" (European Union (Withdrawal) Act 2018 s.20(1)).

EU LEGISLATION. See DIRECT EU LEGISLATION.

EU REFERENCE. Stat. Def., "means—

(a) any reference to the EU, an EU entity or a member State,

(b) any reference to an EU directive or any other EU law, or

(c) any other reference which relates to the EU" (European Union (Withdrawal) Act 2018 s.20(1)).

EU REGULATION. Stat. Def., "a regulation within the meaning of Article 288 of the Treaty on the Functioning of the European Union" (European Union (Withdrawal) Act 2018 s.20(1)).

EU TERTIARY LEGISLATION. Stat. Def., "means—

(a) any provision made under—

(i) an EU regulation,

(ii) a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, or

(iii) an EU directive,

by virtue of Article 290 or 291(2) of the Treaty on the Functioning of the European Union or former Article 202 of the Treaty establishing the European Community, or

(b) any measure adopted in accordance with former Article 34(2)(c) of the Treaty on European Union to implement decisions under former Article 34(2)(c),

but does not include any such provision or measure which is an EU directive" (European Union (Withdrawal) Act 2018 s.20(1)).

EXCEPTED ELECTRONIC DATA. Stat. Def. ("means electronic data that is—(a) an item subject to legal privilege, or (b) a personal record which is a confidential personal record."), Crime (Overseas Production Orders) Act 2019 s.3.

EXCEPTIONAL CIRCUMSTANCES. "[10] The decisions in *Hume v Nursing and Midwifery Council* 2007 SC 644, *Pomiechowski v District Court of Legnica, Poland* [2012] 1 WLR 1604, *Adesina v Nursing and Midwifery Council* [2013] 1 WLR 3156 and *Nursing and Midwifery Council v Daniels* [2015] Med LR 255, are reconcilable. Hume remains applicable, to the extent that the general dispensing power in RCS 2.1(1) is the vehicle through which the time limit in art 29(10) may be extended. However, in light of the imperative terms of a statutory provision, which must carry great weight, the power to do so should be exercised not simply where there has been a mistake, oversight or other excusable cause but, as required by article 6(1) of the Convention, only when the applicant has personally done all he or she can to bring the appeal on time, and if not on time, as soon as possible after that. That is the meaning of 'exceptional circumstances' in this context. The correct formulation should include 'reasonably' before 'can', rather than being stated in absolute terms."—*Neilly Against the Nursing and Midwifery Council* [2019] ScotCS CSIH 3.

EXCURSION. "I begin, then, with the meaning of 'excursion' in ordinary language. One of the meanings of 'excursion' given in the Shorter Oxford English Dictionary is 'a pleasure trip taken esp. by a number of people to a particular place'. In the French Larousse online dictionary the meaning of 'excursion' is stated to be 'voyage d'agrément ou d'étude fait dans une région'. The Italian Olivetti online dictionary defines 'escursione' as 'gita a scopo di studio o di piacere', while the Spanish online dictionary of the Real Academia Espanola defines 'excursión' as 'ida a alguna ciudad, museo o lugar para estudio, recreo o ejercicio fisico'. Pleasure or study features in almost all these dictionary definitions. Thus in all these various languages 'excursion' or its cognates has a meaning which is something more than merely a trip or journey. In my judgment Mr Beal's interpretation gives no weight at all to the usual meaning of excursion in everyday language. If his interpretation were right the Directive would surely have used a less nuanced term such as 'meeting'.

What is that something more? In my judgment it is that, at the very least, the trip or journey in question is not undertaken for the very purpose of entering into the consumer contract in question. That fits with the purpose of the Directive as explained in the recitals. The recital emphasises that the mischief against which the consumer is to be protected is the element of surprise and unpreparedness which would be occasioned if on such a trip he were to be presented with a legally binding contract to sign. It is that element which also explains why the Directive (although not the Regulations themselves) exempts from its scope a visit to a consumer's home or place of work which he has himself requested, unless what he is offered is something that he could not reasonably have anticipated.

As a matter of ordinary language, then, I would not characterise a consumer's visit to a community centre for the express purpose of meeting solicitors with a view to instructing them to take on his case as an 'excursion'. Nor, in my judgment, does that conflict with the purpose of the Directive. A consumer who attends such a meeting whose purpose has been announced in advance would not be surprised or unprepared to give instructions. The judge distinguished between an "excursion" which features in the first indent of Article 1.1 and a 'visit' which features in the second indent. She considered that they must be given different meanings. I agree. It was argued on behalf

of AtlasJet that whereas 'visit' described travel by the trader, an 'excursion' described travel both by the consumer (away from his home or place of work) and also by the trader (away from his business premises). Up to a point that is true. But a visit by a trader is (from his perspective) a visit for business or commercial purposes, whereas an 'excursion' by a consumer is not. The other language versions use the same distinction of language."—*Kupeli v Atlasjet Havacilik Anonim Sirketi* [2017] EWCA Civ 1037.

EXCUSE. See REASONABLE EXCUSE.

EXIT DAY. Stat. Def., European Union (Withdrawal) Act 2018 s.20(1).

EXONERATION. "Where property jointly owned by A and B is charged to secure the debts of B only, A is or may be entitled to a charge over B's share of the property to the extent that B's debts are paid out of A's share. This is known as the equity of exoneration. Although this label, and its origins in the protection given by equity to married women's property rights before the Married Women's Property Act 1882, lends an obscure, even archaic, air, it is best understood as part of the relief more generally given to sureties against the principal debtor. It is as much a feature of contemporary law as it was of equity in the 18th and 19th centuries."—*Armstrong v Onyearu* [2017] EWCA Civ 268.

EXPENSES INCURRED. "As a matter of ordinary English usage, the phrase 'expenses incurred' is, we apprehend, most naturally understood in the broad sense contended for by the claimant. It is natural to describe a person as having incurred an expense whenever he or she has spent money or incurred a liability which in either case reduces his or her financial resources. This is also the sense in which accountants typically use the term – albeit with greater precision than in ordinary usage. For example, FRS 102, the Financial Reporting Standard applicable in the UK, defines 'expenses' as 'decreases in economic benefits during the reporting period in the form of outflows or depletions of assets or incurrences of liabilities that result in decreases in equity, other than those relating to distributions to equity investors.' The concept is similarly defined in the Conceptual Framework for Financial Reporting issued by the International Accounting Standards Board. Under section 121 of PPERA, a permitted participant who incurs referendum expenses exceeding £250,000 during any referendum period is required to appoint an auditor to prepare a report on its return to the Electoral Commission. It would be reasonable to expect an auditor appointed for this purpose, unless otherwise instructed, to apply standard accounting concepts in verifying that the return gives a true and fair view of the expenses incurred by the permitted participant during the referendum period. We do not accept that as a matter of ordinary language incurring an expense means the same as incurring a liability, as was argued on behalf of Vote Leave. An 'expense' and a 'liability' are different concepts. Certainly, someone who, for example, purchases goods under a contract and thereby incurs a liability to pay for them would naturally be said to have incurred an expense. But so too would someone who makes a donation to a charity. In the ordinary meaning of the words an expense can just as well be incurred by making a payment voluntarily without any obligation to do so as by undertaking an obligation to make a payment: the value of the person's assets is equally diminished in each case. It is also to be expected that, if the intention were to restrict the meaning of 'referendum expenses' to expenses which there is a liability to pay, the legislation would say so expressly and that the word 'liable' or 'liability' would appear in the definition. . . . Nevertheless, we would not go so far as to say that as a matter of language the phrase

'expenses incurred' is incapable of being used in the narrower sense contended for by Vote Leave such that only a sum of money which a person becomes liable to pay (typically by making a contract) is to be regarded as an expense incurred by that person. We accept that, if other indications of legislative intention pointed strongly in that direction, the phrase could be construed in this sense.... These provisions certainly indicate that, in the context of the 1983 Act, expenses may be incurred by making a contract and that the incurring of an expense does not necessarily coincide with the payment of an expense. The same is true, as we will soon discuss, under PPERA. But we can see nothing in the 1983 Act to indicate that a person who makes a donation to a candidate does not thereby incur an expense. The difficulty which arises in the present case of how to analyse a tri-partite situation in which a third party pays a supplier directly for goods or services purchased by a campaigner does not arise under the 1983 Act. The problem is avoided under the 1983 Act by the provisions which require all donations to be paid to the candidate or his election agent and all payments of election expenses to be made by or through the candidate's election agent. Payments made directly to a supplier by a third party are therefore prohibited. Under these arrangements it does not matter whether such payments would be treated as expenses incurred by the third party and the statutory provisions do not bear on that question. Nor does any question arise under the 1983 Act of whether a donation constitutes an election expense. The object of an election campaign is the election of a particular candidate and there is no reason why one candidate would want to donate campaign funds to another. The situation is not analogous to a referendum where many different individuals and bodies may be campaigning for the same outcome and there is no prohibition against them making donations to each other. In these circumstances we do not consider that any inference can be drawn that in the 1983 Act the words 'expenses incurred' must be understood to mean liabilities incurred, still less that the words bear that meaning in PPERA.... What this shows is that the meaning of the words 'expenses incurred' in the definition of 'referendum expenses' cannot be determined without also considering the scope of the other elements of the definition. In particular, in determining whether the words 'expenses incurred' should be interpreted broadly as encompassing all donations (as the claimant has argued) or given the narrower interpretation contended for by Vote Leave, a key question is whether, if the words are understood in the broader sense, the second element of the definition which requires the expenses to be 'qualifying' expenses provides a rational basis for discriminating among donations and classifying some donations made for referendum purposes but not others as 'referendum expenses' incurred by the donor.... In this way we consider that, while giving the words 'expenses incurred' their natural meaning, a coherent distinction can be drawn, which accords with the language and purpose of the legislation, between donations which are referendum expenses incurred by the donor and those which are not. The distinction is between what we will as a shorthand call 'general' and 'specific' donations. The standard instance of an ordinary, 'general' donation is a gift of money made to a permitted participant to be used in whatever way the recipient chooses in seeking to promote a particular outcome of the referendum. Such a donation will be an 'expense incurred' by the donor 'for referendum purposes'. But the expense will not be incurred 'in respect of" a matter falling within Part I of Schedule 13 of PPERA. The donor will therefore not have incurred any 'referendum expenses'. The donation of £1 million which Vote Leave reported receiving on 13 June 2016 (referred to at para 14 above)

would appear to fall in this category. If, on the other hand, money (i) is paid directly by the donor (by agreement with the donee) to discharge a liability of the donee to pay for goods or services falling within Part I of Schedule 13 of PPERA or (ii) is paid pursuant to an agreement to pay or reimburse the donee for the cost of such goods or services purchased by the donee, or (iii) is given on terms (binding on the donee) that it is to be used to purchase or pay for particular qualifying goods or services, then the expenses incurred in making such a 'specific' donation are appropriately regarded as incurred 'in respect of' a matter falling within Part I of Schedule 13 of PPERA and hence as 'referendum expenses'."—*The Good Law Project, R (On the Application Of) v Electoral Commission* [2018] EWHC 2414 (Admin).

EXPERIENCE OF INSURANCE OR REINSURANCE. "The Excess Loss Clauses promulgated by the Joint Excess Loss Committee (the 'JELC Clauses') are a standard set of clauses in common use in the London market for excess of loss reinsurance. They contain at clause 15 of the version dated 1 January 1997 an arbitration clause which provides for disputes concerning the contract between the parties to be the subject of arbitration in London. Clause 15.5 states: 'Unless the parties otherwise agree the arbitration tribunal shall consist of persons with not less than ten years' experience of insurance or reinsurance.' The question raised on this appeal is whether a Queen's Counsel who has practised as a barrister specialising in the field of insurance and reinsurance for more than 10 years satisfies this requirement.... It is a safe inference that a lawyer who has specialised in insurance and reinsurance cases for at least 10 years will have acquired considerable practical knowledge of how insurance and reinsurance business is conducted from meeting and taking instructions from clients, having discussions with and reading reports written by expert witnesses, and from reviewing many insurance contracts and many documents generated in the placing and underwriting of insurance contracts and in the handling of claims made under such contracts. Such practical knowledge will inform and assist their legal analysis and their ability to give effective representation and advice.... The conclusions that I would draw are, first, that there is no such thing as insurance or reinsurance 'itself' which is separate and distinct from the law of insurance and reinsurance and, second, that, unless the parties have some special reason for wishing to exclude lawyers from the pool of candidates eligible for appointment, a person who has practised as a barrister specialising in the field of insurance and reinsurance for more than 10 years would naturally be regarded as qualified for appointment as an arbitrator. In these circumstances I consider that reasonable parties who incorporate the JELC Clauses into their contract of excess of loss reinsurance would understand such a barrister to have the requisite experience of 'insurance or reinsurance' within the natural meaning of those words. I also consider that, if the intention were to restrict the parties' freedom of choice by excluding such a person from eligibility, a clear expression of that intention would be needed, which on any view the clause in question does not contain."—*Allianz Insurance Plc v Tonicstar Ltd* [2018] EWCA Civ 434.

EXPLICATION. "I am in something of a fog as to the difference between an 'explication' and a 'gloss'."—*Kaefer Aislamientos SA De CV v AMS Drilling Mexico SA De CV* [2019] EWCA Civ 10.

EXPRESSLY. "It is unnecessary for us to embark on a detailed examination of the reasoning of the sheriff or the sheriff principal and there is no need for any elaborate exposition of the word 'expressly'. Whatever precise meaning that word may have in

different contexts, the intention of Parliament, in the present context, must have been to require something which drew the attention of the tenant to the fact that the term was to be for a period of less than six months. We accept that the provision does not require use of the actual words 'term of less than six months'. But we are satisfied that it is necessary to find some wording with equivalent effect stating that the duration of the agreement is for some explicit period which does not exceed six months or that occupancy is to come to an end at some point within six months. Such a provision would not preclude express reference to the possibility of a further agreement allowing occupancy to continue after that period."—*Falkirk Council v Gillies* [2016] ScotCS CSIH 90.

EXOGENOUS INFECTION. Stat. Def., "means an infectious or contagious disease spread by person to person contact . . . an outbreak of an exogenous infection means the occurrence of cases of such infection in excess of what would normally be expected in a particular community, geographical area or season." (Armed Forces and Reserve Forces (Compensation Scheme) (Amendment) Order 2019/440, art.3).

EXTENT. "The word 'extent' can bear many different meanings and shades of meaning, and is broad enough in abstract to cover scope or width of application, but context gives it greater precision. Here, the 'extent' to which reasonably incurred expenses are to be defrayed is more likely to cover amount alone, than to cover when the money should be paid. However, the words qualifying 'such extent', i.e. 'as is reasonable in all the circumstances', at least permit account to be taken of when the money is paid, or is to be paid, in judging whether defraying that amount is reasonable, even if it is not taken into account in judging whether the expenses were or are to be 'reasonably incurred'. Indeed, it is difficult in the end to see that this aspect of the cost of connection is meant to fall outside both aspects of 'reasonableness' in s19(1). Mr Herberg is right, though, that an expense 'reasonably incurred' may not be an expense which in its full extent is reasonably to be defrayed by the customer, for example where reinforcement works required as part of the connection also provide significant material benefits to other consumers, or if there were a significant delay in the connection being made."—*UK Power Networks (Operations) Ltd, R. (on the application of) Gas and Electricity Markets Authority* [2017] EWHC 1175 (Admin).

F

FAMILY LIFE. "The leading domestic authority on the ambit of 'family life' for the purposes of Article 8 is the well-known decision of this court in *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31; [2003] INLR 31. The court found that a single man of 38 years old who had lived in the UK since 1999 did not enjoy 'family life' with his mother, brother and sister, who were living in Germany as refugees. At para. [14] Sedley LJ accepted as a proper approach the guidance given by the European Commission for Human Rights in its decision in *S v United Kingdom* (1984) 40 DR 196, at 198: 'Generally, the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults, a mother and her 33 year old son in the present case, would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties.'

He held that there is not an absolute requirement of dependency in an economic sense for 'family life' to exist, but that it is necessary for there to be real, committed or effective support between family members in order to show that 'family life' exists ([17]); 'neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together', sufficient ([19]); and the natural tie between a parent and an infant is probably a special case in which there is no need to show that there is a demonstrable measure of support ([18]).... In my view, the shortness of the proposed visit in the present case is a yet further indication that the refusal of leave to enter did not involve any want of respect for anyone's family life for the purposes of Article 8. A three week visit would not involve a significant contribution to 'family life' in the sense in which that term is used in Article 8. Of course, it would often be nice for family members to meet up and visit in this way. But a short visit of this kind will not establish a relationship between any of the individuals concerned of support going beyond normal emotional ties, even if there were a positive obligation under Article 8 (which there is not) to allow a person to enter the UK to try to develop a 'family life' which does not currently exist." Entry Clearance Officer, *Sierra Leone v Kopoi* [2017] EWCA Civ 1511.

FEBRILE FIT. "A 'febrile fit' is a fit, convulsion or seizure experienced by a child with a fever. More often than not the underlying fever is caused by a benign viral illness and is self-limiting—in other words, it resolves itself without any long-term effects."—*XYZ v Maidstone & Tunbridge Wells NHS Trust* [2016] EWHC 2687 (QB).

FELLING. Stat. Def., 'includes intentionally killing a tree', Forestry and Land Management (Scotland) Act 2018 s.22.

FEY. "What the second defender meant by that appears at page 71 of the transcript (MS 713): 'He was always just a fey wee boy ...very boyish and free ...a little bit determined, and hard, a little bit hard work.' I take 'fey' in this context to mean

'high-spirited' (see eg Chambers' Twentieth Century Dictionary)."—*Anderson v John Imrie and Antoinette Imrie* [2018] ScotCS CSIH 14.

FILE. "Both experts agreed that 'file' is an ambiguous term. Its meaning can therefore depend on context. Arranging data into a particular format so as to create a file is referred to as 'writing', 'composing', 'generating' or 'creating'."—*Clearswift Ltd v Glasswall (IP) Ltd* [2018] EWHC 2442 (Pat).

FILING. "The claim form in an application to quash a decision of a Minister must be filed at the Administrative Court, 8APD paragraphs 9.2 and 22.3. 'Filing' means delivering a document by post or otherwise to the court office, CPR 2.3(1). The opening days and hours of the court offices are specified in 2APD paragraph 2.1."—*Croke v Secretary of State for Communities and Local Government* [2016] EWHC 2484 (Admin).

FILING SYSTEM. Stat. Def., Data Protection Act 2018 s.3.

FINAL DETERMINATION. "In the course of its decision, the Court of Appeal made clear that the word 'determination' used in section 77 of the County Courts Act 1984 was equivalent to the phrase 'judgment or order' in section 16 of the Senior Courts Act 1981. These are the two statutory provisions, one for the county court and the other for the High Court, which permit or authorise appeals to the Court of Appeal from those courts respectively. One can therefore see the word 'determination' being used, as it were, as equivalent to the word 'judgment' or 'order'. But of course nothing is said at any stage about any kind of 'final determination', which is the phrase with which I am concerned.... So in my judgment, the word 'final' in the phrase 'final determination' must refer to a point in time when that determination can no longer be changed. In my judgment, it must therefore be referring either to the end of the possibility of any appeal or, if sooner, to a point at which the losing party at first instance acknowledges that there will be no appeal or no further appeal. Accordingly, I hold that on the true construction of this undertaking, the undertaking has not yet come to an end."—*Sberbank of Russia v Ramljak* [2018] EHC 348 (Ch).

FINANCIAL SERVICES. Stat. Def., Sanctions and Anti-Money Laundering Act 2018 s.61.

FINANCIAL PRODUCTS. Stat. Def., Sanctions and Anti-Money Laundering Act 2018 s.61.

FIT AND PROPER PERSON. "There are no provisions, either in statute or case-law, limiting or defining the bases upon which a licensing authority may conclude that an applicant is not a 'fit and proper person' to hold a licence. Such decisions are, of course, subject to the usual controls on administrative action: taking account of relevant considerations and avoiding irrelevant considerations; perversity; Wednesbury unreasonableness and the like. Beyond those controls, the authority enjoys a wide measure of discretion. It is not a necessary prerequisite that an applicant should have been convicted of a criminal offence (*Coyle v Glasgow City Council* 2012 SLT 1018). A licensing authority has a broad discretion when exercising their judgment. They are entitled to place weight on the nature and cumulative impression of a series of circumstances (*McKay v Banff and Buchan Western Division Licensing Board* 1991 SLT 20 at page 24G-H; *Hughes v Hamilton District Council* 1991 SC 251). They are also entitled to expect the applicant to provide information, explanations, or evidence in exculpation or mitigation of any alleged conduct or event which might suggest that he is not a fit and proper person. In this respect, there is a practical onus resting on the applicant (*Chief Constable of Strathclyde v North*

Lanarkshire Licensing Board 2004 SC 304 at paragraph [23]; *McAllister v East Dunbartonshire Licensing Board* 1998 SC 748 at page 757G-H; *Calderwood v Renfrewshire Council* 2004 SC 691 at paragraph 18)."—*Glasgow City Council v Bimendi* [2016] ScotCS CSIH 41.

FLAT. See PREMISES.

FLIGHT. "The judge said that 'flight', for the purposes of section 76(1), is confined to 'journeys with aircraft passing over other property and the associated take-off and landing'. He therefore confined 'flight' in this context to lateral travel from one fixed point to another. He gave no justification or explanation for that limitation. I can see no justifiable basis for it. The statutory definition in section 105(1) of the CAA 1982 contains no such limitation unless it is to be found in the word 'journey'. The word 'journey', however, has no such usual limitation."—*Peires v Bickerton's Aerodromes Ltd* [2017] EWCA Civ 273.

FLICK KNIFE. Stat. Def., Restriction of Offensive Weapons Act 1959, s.1, as amended by Offensive Weapons Act 2019 s.43.

FLUFF. "The claims concern material known in the industry as 'fluff'. Put very simply, household rubbish (or black-bag waste) that goes to landfill is placed in cells lined with a liner to protect the environment. The practice of landfill site operators is to sort the waste before it is first placed in a cell so that the layer on the base of the cell does not contain sharp or heavy objects which might puncture the liner. This layer, typically 2 metres deep, has come to be known as 'base fluff'. A similar practice is adopted on the sides of the cell as the cell is filled up, and this material has come to be known as 'side fluff'."—*Veolia ES Landfill Ltd, R. (on the application of) v HM Revenue & Customs* [2016] EWHC 1880 (Admin).

FOLLOWER NOTICE. "'Follower' and 'accelerated payment' notices were introduced by the Finance Act 2014 ('FA 2014') with a view to addressing tax avoidance. A follower notice renders the recipient liable to a penalty if he does not take steps to counteract or surrender a tax advantage. An accelerated payment notice requires up-front payment of disputed tax."—*Haworth, R (On the Application Of) v Revenue And Customs* [2019] EWCA Civ 747.

FORCED MARRIAGE. "There is a very clear and important distinction between a so-called 'forced marriage' and an 'arranged marriage'. The law tolerates arranged marriages and they are lawful. This case is not concerned in any way whatsoever with arranged marriages or any suggestion of an arranged marriage. It concerns only a suggestion that there might be, or might have been, a forced marriage. I wish to stress and make very clear at the outset of this judgment that forced marriages, when they occur, are a terrible scourge. Indeed, the very notion of a 'forced marriage' involves a brutal contradiction in terms. It is fundamental to any civilised notion of marriage that it is entered into freely and voluntarily, and in the exercise of free will. Those who do, or may, force others into marriage commit very serious criminal offences which, when proved, are likely to lead to substantial sentences."—*The Metropolitan Police Service v Bile* [2019] EWHC 1868 (Fam).

FOREIGN CRIMINAL. "The appeal concerns (i) whether TB is a 'foreign criminal' as defined in s.117D(2) Nationality, Immigration and Asylum Act 2002 ('NIAA'); (ii) if so, whether Exception 1 in s.117C(4) NIAA applies and (iii) if not, whether the 'very compelling circumstances' test is met. . . . In my judgment the UTJ was entitled to conclude that the FJT had made a material error of law in his approach to the issue of whether TB was a persistent offender. In particular: (1) It is apparent

that the FTJ relied on the use of the present tense in the statute: 'is' a persistent offender. This led him to focus unduly on the current position rather than the overall picture. As Chege and SC (Zimbabwe) make clear, a persistent offender is someone who 'keeps on breaking the law'. An individual may be so regarded even though 'he may not have offended for some time'. In Chege, for example, he was regarded as being a persistent offender, even though he had committed no further offences for two years following release from immigration detention. (2) The FTJ's erroneous approach is borne out by the fact that he was prepared to regard TB as no longer a persistent offender at the time of the SSHD decision, which was only 7 months after he had been released from prison. (3) Whilst rehabilitation is a relevant consideration, it is to be noted that Chege at [60] refers to 'an established period of rehabilitation' and keeping out of trouble 'for a significant period of time' which 'may' lead to the conclusion that the individual is no longer a persistent offender. In any event, the findings made by the FTJ on rehabilitation were not referred to in relation to his conclusion on this issue. That conclusion was expressly based on 'the fact that he has committed no offences since October 2013'. (4) The FTJ was wrong to focus on TB's lack of offending from October 2013. TB was in prison until February 2015 and so any absence in offending in the intervening period could not be said to lead to the conclusion that TB was no longer a persistent offender. (5) Once TB left prison he would have been on licence for a period of months and throughout was under the threat of deportation. As pointed out in Chege at [59], whilst there is a strong incentive not to commit further offences lack of offending may be of little significance 'in deciding whether, looking at his history as a whole, he fits the description'. Again, this was not a factor taken into account by the FTJ. (6) In considering the overall picture the FTJ ought to have had regard to the fact that TB had resumed offending in 2013-2014, notwithstanding a significant gap since his prior offending in 2004-2009. In all the circumstances I consider that the UT was entitled to conclude that the FTJ had made a material error of law and to remake that decision. The UT's assessment that TB was a persistent offender involves no error of law or perversity. TB is accordingly a foreign criminal as a persistent offender under s.117D(2)(c)(iii). In those circumstances it is not necessary to address Issue (2) – whether he is also a foreign criminal because he has been convicted of an offence causing serious harm under s.117D(2)(c)(ii)."—*Binbuga (Turkey) v Secretary of State for the Home Department* [2019] EWCA Civ 551.

FOREIGN PROCEEDING. "In reaching this conclusion I have also taken into account the entire definition of 'foreign proceeding'. The process must be 'collective', generally understood to mean that it will deal with creditors generally. The process must be judicial or administrative in nature, the assets and affairs of the entity must be subject to control or supervision by a foreign court, and the process must be for the purpose of reorganisation or liquidation. Importantly, these parts of the test narrow down what might otherwise be regarded as a broad reference to 'law relating to insolvency', and focus the definition on certain types of proceeding only. Whilst a court ordered winding up would clearly meet all these other aspects of the test, there will be other processes authorised by what might be regarded as a 'law relating to insolvency' that would not. These other parts of the definition were all carefully chosen to capture the proceedings for which it was considered that recognition was appropriate, and are important elements of the definition in determining its proper scope."—*Bailey (As Foreign Representatives of Sturgeon Central Asia Balanced Fund Ltd), Re* [2019] EWHC 1215 (Ch).

FORMAL. "It is true that Barlis (at paragraphs 40 and 41), and a number of other cases which we were shown, consistently draw a distinction between the substantive conditions which must be met in order for the right to deduct VAT to arise, and the formal conditions for the exercise of that right. But to describe a requirement as 'formal' does not necessarily imply that compliance with it is optional, or that a failure to satisfy it is always capable of being excused."—*Zipvit Ltd v Revenue And Customs* [2018] EWCA Civ 1515.

FRAGMENTED. "In the first place, that seems the better reading as a matter of ordinary English. That is not only because of the use of the plural but also because the word 'fragmented' naturally connotes a whole which has been broken into parts and thus necessarily implies plurality." *Lidl Ltd v Central Arbitration Committee* [2017] EWCA Civ 328.

FRANCHISING SCHEME. A scheme—(a) under which the authority or authorities identify the local services that they consider appropriate to be provided in an area under local service contracts, (b) by virtue of which those local services may only be provided in that area in accordance with local service contracts (subject to section 123O), (c) by virtue of which the authority or authorities may grant service permits for other local services which have a stopping place in that area (subject to section 123H(5)), and (d) under which the authority or authorities identify additional facilities that they consider appropriate to provide in that area (s.123A Transport Act 2000).

FRAUD. "For the purposes of the present Claims, I do not consider that the meaning of 'fraud' is affected by the fact that the words complained of were spoken by Elders of the Wimbledon Congregation in the context of the outcome of an investigation as to whether Mr Otuo was guilty of the Biblical sin of fraud, and a discussion about whether he had shown repentance. Although there may be circumstances in which references to 'Scriptural fraud' would fall outside the concept of 'fraud' as used in the criminal law (or, for that matter, in civil law claims concerning deceit, fraudulent misrepresentation, and so forth), those circumstances do not arise on the facts of these particular Claims."—*Otuo v Watch Tower Bible And Tract Society of Britain* [2019] EWHC 1349 (QB).

FREEZING (FUNDS). Stat. Def., Sanctions and Anti-Money Laundering Act 2018 s.60.

FRIENDS WITH BENEFITS. "The Claimant was asked by the Defendant in cross-examination how he had regarded their relationship. He said that he had regarded them as having been 'friends'. The Defendant strongly disagreed with that categorisation. I also disagree with it as an accurate description of their relationship, if by it the Claimant meant there was an absence of any romantic affection or feelings on his part and that sex was simply a utilitarian transaction between them (or a 'friends with benefits' arrangement as I believe it is known in modern parlance). There plainly were romantic feelings on both sides. To the extent that they now have a different perception of how serious the relationship was, I consider this to be the fairly typical emotional response of a couple who have broken up in acrimonious circumstances. Both of them honestly believe that their perception of the relationship is the correct one."—*Bull v Desporte* [2019] EWHC 1650 (QB).

FUGITIVE. "'Fugitive' is not a term used in the statutory scheme, but a common law principle that, in order to resist extradition on the basis of passage of time, an accused person cannot rely upon delay which he himself has caused, as developed in

particular in *Kakis v Government of the Republic of Cyprus* [1973] 1 WLR 779 and *Gomes and Goodyer v Government of the Republic of Trinidad and Tobago* [2009] UKHL 21. A person has fugitive status [if] he has knowingly placed himself beyond the reach of legal process (*Wisniewski* at [59]). Before this principle applies, a person's status as a fugitive must be established to the criminal standard (*Gomes and Goodyer* at [27]).'"—*Stryjecki v District Court in Lublin, Poland* [2016] EWHC 3309 (Admin).

"Is a requested person a 'fugitive' if she fails to return to the jurisdiction of the requesting state from the country of which she is a resident in breach of the obligation placed on her by the courts of the requesting state at a time when she was in her home country? . . . The test for fugitive status is whether the requested person knowingly placed himself beyond the reach of a legal process. It is to be noted that, unlike the test for being unlawfully at large (which is objective), the test for fugitive status is subjective – the requested person must be shown deliberately and knowingly to have placed himself beyond the reach of the relevant legal process."—*Zorzi v Attorney General Appeal Court of Paris (France)* [2019] EWHC 2062 (Admin).

FUNDAMENTALLY DISHONEST. "As noted above, one-way costs shifting can be displaced if a claim is found to be 'fundamentally dishonest'. The meaning of this expression was considered by His Honour Judge Moloney QC, sitting in the County Court at Cambridge, in *Gosling v Hailo* (29 April 2014). He said this in his judgment: '44. It appears to me that this phrase in the rules has to be interpreted purposively and contextually in the light of the context. This is, of course, the determination of whether the claimant is 'deserving', as Jackson LJ put it, of the protection (from the costs liability that would otherwise fall on him) extended, for reasons of social policy, by the QOCS rules. It appears to me that when one looks at the matter in that way, one sees that what the rules are doing is distinguishing between two levels of dishonesty: dishonesty in relation to the claim which is not fundamental so as to expose such a claimant to costs liability, and dishonesty which is fundamental, so as to give rise to costs liability. 45. The corollary term to 'fundamental' would be a word with some such meaning as 'incidental' or 'collateral'. Thus, a claimant should not be exposed to costs liability merely because he is shown to have been dishonest as to some collateral matter or perhaps as to some minor, self-contained head of damage. If, on the other hand, the dishonesty went to the root of either the whole of his claim or a substantial part of his claim, then it appears to me that it would be a fundamentally dishonest claim: a claim which depended as to a substantial or important part of itself upon dishonesty.' In the present case, neither counsel sought to challenge Judge Moloney QC's approach. Mr Bartlett spoke of it being common sense. I agree."—*Howlett v* [2017] EWCA Civ 1696.

FUNDS. Stat. Def., Sanctions and Anti-Money Laundering Act 2018 s.60.

G

GABBRO. "Gabbro is a dense, coarse-grained igneous rock."—*Community Against Dean, R. (on the application of) v Shire Oak Quarries Ltd* [2017] EWHC 74 (Admin).

GALILEO PROGRAMME. Stat. Def., Public Regulated Service (Galileo) Regulations 2018 reg.2.

GAP. "In summary the Hearing Officer, having considered the evidence of the applicant, concluded that: i) 'Gap year' initially referred to taking a year out between finishing at school and starting at university, and did not necessarily involve a year's travel; ii) 'Gap year' still retains that meaning; iii) 'Gap' was also used to describe a break between finishing university and starting work, but this was usually a period of months, rather than a full year; iv) The term 'gap year travel' would be recognised by the majority of average consumers (i.e. the general public; paragraph [19] of the Decision); v) 'Gap travel' would be recognised by the majority of average consumers as well as the travel profession as relating to travel during a gap or gap year. . . . in my judgment the Hearing Officer was entitled to conclude that the majority of average consumers would understand the words 'gap year', 'gap travel' and 'gap' in the way that he set out at paragraph [34] of the Decision. His careful analysis of the evidence supported these conclusions. There was a stronger case as to the meaning of 'gap year' than 'gap travel' or 'gap' in the context of travel, as these latter expressions were generally used as a form of shorthand, after initial reference to a gap year. . . . I have found that a significant proportion of average consumers would consider that the words 'gap travel' are not limited to those taking a break during the period between school and university or between university and work. Such consumers would also understand those words to include travel services offered to persons taking a career break, spending a redundancy payment, or enjoying their retirement. Whilst 'gap travel' might typically be for longer than a two-week holiday, it would not be understood by a significant proportion of average consumers as limited to a trip of any particular duration. Therefore, I do not accept that the expression 'gap travel' is apt to distinguish one form of travel from another, and therefore does not distinguish meaningfully between travel services."—*Gap (ITM) Inc v Gap 360 Ltd* [2019] EWHC 1161 (Ch).

GARDEN. "This is an appeal by way of case stated against a decision of the Ipswich Crown Court on 29 August 2007. By that decision the court dismissed the appellant's appeal against a conviction for an offence of felling growing trees without a licence contrary to section 17(1) of the Forestry Act 1967. If the land on which he felled those trees was a garden, he was not guilty. If, however, it was not a garden, then he required a licence and he was guilty. Anyone hoping that this court will provide any all-embracing test of whether land is a garden or not is doomed to disappointment. Indeed, the very concept of a garden, which is undefined in the Act, emphasises the danger of any court seeking to give a definitive definition of a garden,

lest the very factual flexibility inherent within the statute should be impeded by too rigorous a straitjacket.... The court was guided by the decision of this court in *McInerney v Portland Port Ltd* [2001] 1 PLR 104. That case is authority for the principle that in order to identify whether land comprises of garden, it is necessary not only to look at its appearance and its characteristics, but also to its use. Latham LJ, in giving judgment, referred to the definition of garden in the Oxford English Dictionary, but described that definition as deficient in detail. I am not surprised. The dictionary to which he referred described an enclosed piece of ground devoted to the cultivation of flowers, fruit or vegetables. Christopher Lloyd would be turning in his grave at such a description, and Beth Chatto would regard that as wholly inadequate given the current fashion for wild flower gardens and meadows. 16. The reality is that no description of land will conclusively establish whether that land is a garden for this important reason: that it is also incumbent upon the fact-finder, determining a controversy as to whether land comprises a garden or not, to consider its use. As Blake J said arguendo, it is important to look at the relationship between the human occupier of the land and the space; I understand him to mean that it is necessary to look at how the particular occupier in question used the land."—*Rockall v Department of Environment Food & Rural Affairs* [2008] EWHC 2408 (Admin).

GAS TRANSPORTER. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

GASIFICATION. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

GCHQ. Stat. Def., Network and Information Systems Regulations 2018 reg.1.

GDPR. Stat. Def., Data Protection Act 2018 s.3.

GENERALLY ACCEPTED ACCOUNTING PRACTICE. "'Generally accepted accounting practice' is defined for the purposes of the Tax Acts by section 50 of FA 2004. Unless a company prepares its accounts in accordance with 'international accounting standards', the expression means 'UK generally accepted accounting practice', which in turn means 'generally accepted accounting practice with respect to accounts of UK companies... that are intended to give a true and fair view': see section 50(1) and (4)(a)."—*GDF Suez Teesside Led v Revenue And Customs* [2018] EWCA Civ 2075.

GENETIC DATA. Stat. Def., Data Protection Act 2018 s.205.

GENUINE. "Judge Hand's concerns seem to have focused in particular on whether the Tribunal was making a finding that BMC's explanations for the differentials complained of were not 'genuine'. That is a slippery term, but it was certainly not necessary, if this is what he meant, for the Tribunal to make a finding that the explanation was a deliberate sham, or otherwise disingenuous: see my judgment in *Bury Metropolitan Borough Council v Hamilton* [2011] UKEAT 0413-5, [2011] ICR 655, at para. 18 (pp. 664-5). It was sufficient for it to decide, as it did, that BMC had not proved that the differentials complained of were due to any of the three pleaded factors; and of course to explain, as it did, the defects in the explanations and evidence advanced that led to that decision. In the case of Mr A's 'promotion', for example, it needed to be satisfied that that reflected a real difference in responsibilities as opposed to a mere change in title (particularly given that it was common ground that he and the Claimant were doing equal work); and it believed that in the light of the incoherent and haphazard use of job-titles in BMC it could not be so satisfied. It is important not to overlook, as Judge Hand arguably comes close to doing, that the burden is on the

employer to prove (by sufficiently cogent and particularised evidence) that the factor relied on explains the difference in pay complained of."—*BMC Software Ltd v Shaikh* [2019] EWCA Civ 267.

GILT. Stat. Def. ("UK government sterling denominated bonds issued by or on behalf of the Treasury"), Cash Ratio Deposits (Value Bands and Ratios) Order 2018 art.2.

GLOSS. "I am in something of a fog as to the difference between an 'explication' and a 'gloss'."—*Kaefer Aislamientos SA De CV v AMS Drilling Mexico SA De CV* [2019] EWCA Civ 10.

GOOD REPUTE. "By the time this matter came to the Upper Tribunal, it was no longer in issue that the DTC was entitled to take account of conduct that was not unlawful in determining the question of good repute. Further, as indicated earlier, the relevant legal principles as identified by the DTC, and his findings of fact are not now the subject of challenge. The real focus of this appeal is on the DTC's evaluative judgment, and on the decision of the Upper Tribunal to uphold it. As to that, I can see no basis for interfering with the decision of the Upper Tribunal. In my judgment, the DTC's analysis, set out above, disclosed no error, and the Upper Tribunal was correct to confirm his decision for the reasons it gave.... The appellants submitted that evidence of a personal dislike of a traffic commissioner by a director of a company which holds an Operator's Licence and a desire to criticise her public conduct, whether purely malicious or otherwise, is not relevant to the operator's ability to operate bus services in keeping with the regulations. However, the question of relevance is a concrete, not an abstract one; and as the Upper Tribunal identified, it is important to focus on the facts as found by the DTC. Specifically these were as follows. Mr Higgs' conduct was targeted at the STC in consequence of her performing her functions within the regulatory regime in making a decision adverse to Mr Higgs. It was not the case, as Mr Higgs had suggested that his intention was merely for her to be held to account for her behaviour. Mr Higgs' conduct amounted to a serious invasion of privacy and inevitably led to the considerable upset and distress reported to the police. The worry and distress arose because the STC (neither unreasonably nor surprisingly) thought that her home had been identified and/or was under surveillance. The conduct did not merely involve following and filming the STC in an attempt to obtain footage that might harm her reputation and standing. It also involved posting a video on YouTube in an attempt to cause her maximum damage and embarrassment. Mr Higgs was at best uncaring about the impact on the STC, and it was more likely than not that he wanted to cause her distress and was acting out of malice. His conduct showed animosity, resentment and a tendency to take the law into his own hands. The seriousness of what occurred was compounded by the fact that the video was uploaded and sent through post using a false identity. Mr Higgs knew what he was doing was wrong, hence his decision to cover his tracks. The connection back to Mr Higgs was only discovered after specially trained police were able to trace him. Further, Mr Higgs could not say if he would do the same thing again in the same circumstances. He expressed no remorse or apology for causing distress or for any other aspect of his conduct. Whilst the police had decided not to prosecute Mr Higgs for harassment, they had issued the Harassment Notice in relation to his conduct. Mr Higgs had had a range of acceptable options open to him that did not involve this sort of conduct, to raise and deal with his sense of grievance and suspicion. Instead he chose to engage in conduct that was a totally inappropriate response to the injustice he perceived had been done to

him. The DTC and the Upper Tribunal, with their specialist knowledge of this field, considered these were matters that were quite obviously relevant to the good repute and fitness questions being considered by the DTC, and demonstrably connected to Mr Higgs' fitness to hold a licence. I agree. In my view, the facts demonstrated that Mr Higgs' conduct could properly to be characterised as an affront to the regulatory system rather than (merely) an affront to the particular individual concerned. As Sir James Eadie QC submitted, they indicated that Mr Higgs was a man who was unprepared to accept regulatory action or confine himself to the legitimate routes available for redress, but was prepared to (and did) operate outside the system by maliciously targeting the decision-maker responsible for overseeing and administering the regulatory system through an intrusive, distressing and intimidating campaign designed to destroy or seriously damage her reputation. This included with the Upper Tribunal to whom a copy of the video was sent at a time when he had, under his own name, apparently engaged with the process of appeal. There could be no assurance against repetition were he to be the subject of an adverse adjudication in the future, in circumstances where Mr Higgs knew what he was doing was wrong and demonstrated neither remorse nor any real insight about the implications of his conduct, appearing instead to consider that the ends justified the means. In those circumstances, the Upper Tribunal's strong core conclusion, reflecting that of the DTC, that Mr Higgs intended to create an intimidatory atmosphere for others involved in traffic adjudication and that such conduct represented a direct attack on the very essence of an independent adjudicatory process was one it was justified in reaching on the facts; as was its conclusion and similarly reached that these matters went directly to the 'implicit expectation of trust which it is often said is the basis of the relationship between operators and the Traffic Commissioners' and to the likelihood of Mr Higgs' future compliance with the licensing regime (the Priority Freight question). The issue of proportionality was carefully considered by the DTC who specifically asked himself whether this was a case where the conduct was such that the operator ought to be put out of business (the Bryan Haulage question). In the light of the findings he had made, including as to the seriousness of what had occurred, and its implications for future conduct, the decision that the company had lost its good repute and that Mr Higgs should be disqualified for holding or obtaining a PSV operator's licence for 12 months could not be described as irrational; on the contrary, it was, in my view, a reasonable one."—*Catch22bus Ltd v The Secretary of State for Transport* [2019] EWCA Civ 1022.

GOODWILL. "As to the meaning of 'goodwill', the judge considered that the word was not used in the technical accounting sense of the difference between the cost of an acquired entity and the aggregate of the fair values of that entity's identifiable assets and liabilities. It was rather used in the economic sense of the capitalized value of a business or part of a business as a going concern which, according to modern theory of corporate finance, was best understood as the expected free future cash flows of the business discounted to a present value. It is not in our opinion necessary for present purposes to decide the precise meaning of 'goodwill' as a matter of accounting or economic theory; it is sufficient to note that it represents an element in the value of a business that is additional to the tangible and intangible assets of the business. What is critical on the basis of the Strasbourg case law is that the goodwill should be an asset with a monetary value, and should represent more than an expected stream of future income which has not been capitalized; that is apparent from the passage quoted

above from *Denimark Ltd v United Kingdom*." —*McMaster, Petition of Against the Scottish Ministers* [2018] ScotCS CSIH 40.

GOVERNMENT DEPARTMENT. Stat. Def., Data Protection Act 2018 s.205.

GROSS SALES INCOME. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

GROUND LOOP. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

GROUND SOURCE HEAT PUMP. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

GROUP. "Where it is in error is firstly in assuming that because an expression must be read eiusdem generis in one context, that defines its meaning for other contexts in which there is no requirement to read the same expression 'eiusdem generis' with any other words. The word 'group' is a common English word, capable of applicability in a wide range of circumstances. Where it is qualified by the adjectival use of 'patient' then the group has plainly to consist of those who are identified as 'patients' in some relevant respect, but otherwise the breadth of the word 'group' remains. The purpose of the eiusdem generis principle is to limit what would otherwise be recognised as the generality of the wording in a particular context. It cannot be used to define the meaning of the expression where there are no words which suggest that the meaning should be limited in that way. Consider the example of the expression: 'cats, dogs and other animals'. In this expression, 'other animals' has to be understood in the context of 'cats' and 'dogs'. 'Other animals' will thus be domestic animals. Remove the words 'cats, dogs and other' and the word is simply 'animals'. Absent specific context, there would be no warrant in any statute or instrument which referred to the composite expression in one place, and the unqualified word 'animals' in another, for reading the latter as limited to domestic animals. It would retain the generality of meaning which it was the very purpose of the word 'other' to restrict by reference to specific examples in the list of which it formed part."—*Community Pharmacies (UK) Ltd, R. (on the application of) v National Health Service Litigation Authority* [2016] EWHC 1595 (QB).

GSM SYSTEM. Stat. Def., Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2.

GUARANTEED OVERTIME. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

H

HARASSMENT. "Section 7 does not define 'harassment'. It merely provides guidance as to the interpretation of the operative provisions. Further guidance has been provided by the Supreme Court in *Hayes v Willoughby* [2013] UKSC 17; [2013] 1 WLR 935, where Lord Sumption SC said at [1] that harassment is '… an ordinary English word with a well-understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress.'"—*Barkhuysen v Hamilton* [2016] EWHC 2858 (QB).

"The use of the words 'alarm and/or distress' in Mr Hudson's submission is a reflection of s 7(2) of the 1997 Act, which provides that 'references to harassing a person include alarming the person or causing the person distress'. This is not a definition of the tort. It is merely guidance as to one element of it. Nor is it an exhaustive statement of the consequences that harassment may involve. The Supreme Court gave further guidance in *Hayes v Willoughby* [2013] UKSC 17; [2013] 1 WLR 935, where Lord Sumption SC said at [1] that harassment is '… an ordinary English word with a well-understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress.'"—*Hourani v Thomson* [2017] EWHC 432 (QB).

HARM. Stat. Def. ("harm includes physical and psychological harm"), Offensive Weapons Act 2019 s.33.

HAVE REGARD TO. "As to the proper approach to be taken by the court, a useful and elegant summary is to be found in the earlier judgment of Elias LJ in *R(Hurley) v Secretary of State for Business Innovation and Skills* [2012] EWHC 201 (Admin) at [78], a passage that was expressly approved in Bracking. As he concluded: 'the concept of "due regard" requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria… the decision maker must be clear precisely what the equality implications are when he puts them in the balance, and he must recognize the desirability of achieving them, but ultimately it is for him to decide what weight they should be given in the light of all relevant factors.'"—*Law Centres Federation Limited (t/a Law Centres Network), R (On the Application Of) v The Lord Chancellor* [2018] EWHC 1588 (Admin).

HEALTH CARE PROFESSIONAL. Stat. Def. ("a registered medical practitioner or a registered nurse"), Short-term Holding Facility Rules 2018 rule 2.

HEALTH PROFESSIONAL. Stat. Def., Data Protection Act 2018 s.204.

HEALTH RECORD. Stat. Def., Data Protection Act 2018 s.205.

HEALTH SERVICE USE. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

HEAT LOSS CALCULATION. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

HEAT METER. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

HEREDITAMENT. "10. Non-domestic rates are a tax on individual units of property, known in England as hereditaments. Where a hereditament is wholly or partly occupied, rates are payable by the party who is in rateable occupation. While a hereditament may be occupied by more than one party, only one occupier may be in rateable occupation. Under section 42 of the Local Government Finance Act 1988 the rating list must show every relevant non-domestic hereditament. Under section 64(4)(a), a hereditament is a relevant hereditament if it consists of 'lands'. Section 64(1) defines a 'hereditament' as 'anything which, by virtue of the definition of hereditament in section 115(1) of [the General Rate Act 1967], would have been a hereditament for the purposes of that Act had this Act not been passed'. The relevant definition in section 115(1) of the 1967 Act is 'property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list'. 11. Whether a unit of property is capable of being a hereditament is determined by applying principles developed by the courts in a long series of cases. In *Woolway (Valuation Officer) v Mazars LLP* [2015] AC 1862, [2015] UKSC 53, the Supreme Court confirmed that the primary test of whether distinct spaces in common occupation were to be assessed for rates as a single hereditament was a 'geographical' test – which, said Lord Sumption (in paragraph 6 of his judgment), 'depends simply on whether the premises said to constitute a hereditament constitute a single unit on a plan'. He referred (in paragraph 11) to the Scottish rating decision in *Burn Stewart Distillers Plc v Lanarkshire Valuation Joint Board* [2001] R.A. 110, where it was emphasized by the court that '[the] underlying purpose is to provide a proper basis for a tax on property, not a tax on persons or businesses'. Lord Sumption recognized (in paragraph 12 of his judgment) three broad principles in the relevant authorities: '12. … First, the primary test is … geographical. It is based on visual or cartographic unity. Contiguous spaces will normally possess this characteristic, but unity is not simply a question of contiguity, as the second Bank of Scotland case [*Bank of Scotland v Assessor for Edinburgh* (1891) 18 R 936] illustrates. If adjoining houses in a terrace or vertically contiguous units in an office block do not intercommunicate and can be accessed only via other property (such as a public street or the common parts of the building) of which the common occupier is not in exclusive possession, this will be a strong indication that they are separate hereditaments. If direct communication were to be established, by piercing a door or a staircase, the occupier would usually be said to create a new and larger hereditament in place of the two which previously existed. Secondly, where in accordance with this principle two spaces are geographically distinct, a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of the one is necessary to the effectual enjoyment of the other. This last point may commonly be tested by asking whether the two sections could reasonably be let separately. Thirdly, the question whether the use of one section is necessary to the effectual enjoyment of the other depends not on the business needs of the ratepayer but on the objectively ascertainable character of the subjects. The application of these principles cannot be a mere mechanical exercise. They will commonly call for a factual judgment on the part of the valuer and the exercise of a large measure of professional common sense. But in my opinion they correctly summarise the relevant law. They are also rationally founded on the nature of a tax on individual properties. …'. 12. Lord Neuberger of

Abbotsbury, Lord Carnwath, Lord Toulson and Lord Gill all agreed with Lord Sumption. Lord Neuberger said that '[normally] … both as a matter of ordinary legal language and as a matter of judicial observation, a hereditament is a self-contained piece of property (… property all parts of which are physically accessible from all other parts, without having to go onto other property), and a self-contained piece of property is a single hereditament' (paragraph 47). Lord Gill confirmed (at paragraph 35) that '[in] the law of Scotland, the identification of the valuation unit, or the unum quid, rests on a geographical test'."— *Cardtronics Europe Ltd v Syke (Valuation Officers)* [2018] EWCA Civ 2472.

HIGH COURT. "Is the High Court comprised (among others) of Masters of the Queen's Bench Division? No. Section 4 of the SCA 1981 provides a list of those who comprise the High Court, and Masters are not on the list." – but note that the case concludes that proceedings before the Master are proceedings in the High Court—*Abdule v The Foreign And Commonwealth Office* (national security – jurisdiction and status) [2018] EWHC 692 (QB).

HIGHWAY. "There is no statutory definition of 'highway' either in the 1980 Act, save for the very limited provision in section 328 quoted above, or in the GLA Act. It is therefore necessary to have regard to its meaning at common law. The commentary on section 328 in the Encyclopaedia of Highways Law and Practice says at para 2-484.2: 'This section does not define the term "highway" and it is necessary therefore, whenever the meaning of this word is in issue, to refer to the common law rules. Stated shortly, a highway may be defined as a way over which all members of the public have the right to pass and repass. Their use of the way must be as of right, not on sufferance or by licence.'"—*London Borough of Southwark v Transport for London* [2017] EWCA Civ 1220.

"The word highway has no single meaning in the law but, in non-technical language, it is a way over which the public have rights of passage, whether on foot, on horseback or in (or on) vehicles. At common law, at least prior to 1835, there was, generally speaking, no necessary connection between those responsible for the maintenance and repair of a public highway and those with a proprietary interest in the land over which it ran. Prima facie the inhabitants of the parish through which the highway ran would be responsible for its repair, but they were not a corporate body suitable to hold ownership rights in relation to it: see Sauvain on Highway Law (5th ed, 2013) at para 3-05. As he puts it: 'It was left to statute, therefore, to create an interest in land which was to be held by the body on whom the duty to repair had fallen.' Parliament began this task, in a rudimentary way, in section 41 of the Highways Act 1835, continued it in section 68 of the Public Health Act 1848, section 96 of the Metropolis Management Act 1855 and section 149 of the Public Health Act 1875. They all provided for a form of automatic vesting of a property interest in the land over which the highway ran in favour of the body responsible for its maintenance and repair. … In my judgment article 2(1)(a) transfers to TfL ownership of all that part of the vertical plane relating to a GLA road vested in the relevant council on the operative date, but only to the extent that ownership was then vested in the council in its capacity as former highway authority. That is, in my view, the true meaning of the phrase 'the highway, in so far as it is vested in the former highway authority'. … The Court of Appeal concluded that 'highway' as used in article 2 and section 265 had a clear common law meaning, limited in the vertical plane to the zone of ordinary use. I respectfully disagree. The word 'highway' is not a defined term, either in the 1980 Act,

in the Transfer Order, or in the GLA Act. There is a limited explanation, in section 328 of the 1980 Act that: 'In this Act, except where the context otherwise requires, 'highway' means the whole or a part of a highway other than a ferry or waterway.' This is largely circular so far as concerns the core meaning of 'highway' and, in any event, subject to context. It does not follow that the interpreter is therefore required to find some uniform meaning of the word 'highway' wherever it is used, either in the relevant legislation or, as the Court of Appeal thought, at common law. 32. There is in my view no single meaning of highway at common law. The word is sometime used as a reference to its physical elements. Sometimes it is used as a label for the incorporeal rights of the public in relation to the locus in quo. Sometimes, as here, it is used as the label for a species of real property. When used within a statutory formula, as here, the word necessarily takes its meaning from the context in which it is used."—*London Borough of Southwark v Transport for London* [2018] UKSC 63.

HOLDING DEPOSIT. Stat. Def., Tenant Fees Act 2019, s.28, Sch.1, para.3.

HOLDING ROOM. Stat. Def., Short-term Holding Facility Rules 2018 rule 2.

HOME ADDRESS. Stat. Def. ("'home address', in relation to a defendant, means—(a) the address of the defendant's sole or main residence, or (b) if the defendant has no such residence, the address or location of a place where the defendant can regularly be found and, if there is more than one such place, such one of those places as the defendant may select."), Offensive Weapons Act 2019 s.33; Stat. Def. ("in relation to a person, means—(a) the address of the person's sole or main residence in the United Kingdom, or (b) if the person has no such residence, the address or location of a place in the United Kingdom where the person can regularly be found and, if there is more than one such place, such of those places as the person may select"), Stalking Protection Act 2019 s.14.

HOMOLOGATION. "The classic exposition of the doctrine of homologation is to be found in Bell's Principles 10th edition at paragraph 27. 'Homologation … is an act … approbatory of a preceding engagement, which in itself is defective or informal … either confirming or adopting it as binding. It may be expressed, or inferred from circumstances. It must be absolute, and not compulsory, nor proceeding on error or fraud, and unequivocally referable to the engagement; and must imply assent to it, with full knowledge of its extent and of all the relative interests of the homologator.' The effect of homologation is to remove the right to resile from the informal agreement. The actings must be carried out in the full knowledge of all matters relevant to the homologator's rights and interests. Most obviously this includes knowledge of the right to resile."—*Khosrowpour v Mackay* [2016] ScotCS CSIH 50.

HORSE. Stat. Def. ("includes an ass, mule or hinny"), Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2.

HOSTILE ACTIVITY. Stat. Def., Counter-Terrorism and Border Security Act 2019, Sched.3, para.1.

HOUSE. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

HOW. "The Claimant's pleaded case (albeit not one which Mr Michael Fordham QC, on behalf of the Claimant, appeared to advance in his written and oral submissions as a discrete argument to any great extent), is that the definition of the word 'how', which accords with its natural and ordinary meaning, is 'in what way or by what means' (OED definition) (see Claimant's combined statement of facts and grounds ('SFG'), para 50). In this context, the Claimant contends that it refers to the way or manner in which voting occurs, or the (physical) means by which votes are

cast, and does not encompass matters relating to a person's eligibility and entitlement to vote. Further, that interpretation of the word 'how' the Claimant contends accords with the straightforward construction of s.10(2)(a) when read as a whole. The words 'when' and 'where' refer to the way or manner in which votes are to be cast, in particular the time and the place where voting is to take place. They are concerned with the practicalities of voting. The Claimant's pleaded case is that 'The word "how" should be given a meaning which is consistent with the rest of this clause, one which concerns the physical manner or way in which voting takes place, not whether it can take place at all' (SFG, para 52). Any wider meaning given to the word 'how', such as that suggested by Mr Mussa would, Mr Fordham submits, make s.10(2)(b) and (c) redundant. I do not accept these submissions. I prefer Mr Mussa's construction of the word 'how'. First, s.10(2)(a) is dealing with voting procedures. On their natural and ordinary meaning the words 'how voting at elections is to take place' are broad enough to encompass procedures for demonstrating an entitlement to vote, including by proving identity, as part of a voting process. Had Parliament intended to confine the provision to refer to the physical mechanism by which an individual vote is cast, it could have made that clear (see language used in s.10(2)(b)). The Claimant accepts that the statutory language permits remote electronic voting, for example over the internet, to be tested. Mr Fordham also accepts that such an alternative mechanism for voting could not be utilised safely without at least imposing some further conditions relating to the identification of eligible voters. He submits that the imposition of such conditions is incidental to the introduction of remote electronic voting. However, I agree with Mr Mussa that if the words 'how voting at the elections is to take place' are broad enough to encompass the imposition of identification requirements in the context of remote voting arrangements, that is some indication that they are broad enough to encompass such requirements where voting does not take place remotely."—*Coughlan, R (On the Application Of) v The Minister for the Cabinet Office* [2019] EWHC 641 (Admin).

I

IDENTIFIABLE LIVING INDIVIDUAL. Stat. Def., Data Protection Act 2018 s.3.

IDENTIFICATION NUMBER. Stat. Def., Railways (Penalty Fares) Regulations 2018 reg.3.

IDENTIFIES. "This appeal turns on the meaning of 'identifies' and on the meaning of the notice to which that word is being applied. Both are questions of law, although the answers may be informed by background facts. The essential question before us is what background facts may be relevant for this purpose. In my opinion, a person is identified in a notice under section 393 if he is identified by name or by a synonym for him, such as his office or job title. In the case of a synonym, it must be apparent from the notice itself that it could apply to only one person and that person must be identifiable from information which is either in the notice or publicly available elsewhere. However, [to] resort to information publicly available elsewhere is permissible only where it enables one to interpret (as opposed to supplementing) the language of the notice. Thus a reference to the 'chief executive' of the X Company may be elucidated by discovering from the company's website who that is. And a reference to 'CIO London Management' would be a relevant synonym if it could be shown to refer to one person and that person so described was identifiable from publicly available information. What is not permissible is to resort to additional facts about the person so described so that if those facts and the notice are placed side by side it becomes apparent that they refer to the same person."—*Financial Conduct Authority v Macris* [2017] UKSC 19.

IMPRISONMENT. "The appeal raises a single issue of law: whether detention in a young offenders' institution ('YOI') counts as imprisonment for the purposes of regulation 3(3) of the 2016 Regulations so that, in principle, it breaks the continuity of the period of residence required in order for an offender to benefit from enhanced protection against expulsion under the 2016 Regulations. . . . The CJEU jurisprudence to which I have referred establishes (i) that the degree of protection against expulsion to which a Union national resident in another member state is entitled under the Directive is dependent upon the degree of integration of that individual in the member state; (ii) that, in general, a custodial sentence is indicative of a rejection of societal values and thus of a severing of integrative links with the member state but (iii) that the extent to which there is such a severing of integrative links will depend upon an overall assessment of the individual's situation at the time of the expulsion decision. Although the jurisprudence refers most frequently to 'imprisonment' rather than 'custodial sentence' I am quite satisfied that the rationale for the principle that, in general, a custodial sentence is indicative of a rejection of societal values and a severing of integrative links so as to interrupt the required continuity of residence, is equally applicable to sentences of detention in a YOI as it is to imprisonment. This is because, on a proper analysis, it is not the sentence which indicates rejection of

societal values but the offending which is sufficiently serious to warrant a custodial sentence whether of imprisonment or some other form of detention. . . . Given that, in regulation 3, Parliament was avowedly intending to give effect to the decisions of the CJEU in Onuekwere and MG, I agree with Mr Lask that 'sentence of imprisonment' in the regulation should be widely construed to include all forms of custodial sentence, including detention in a YOI, in order to reflect the principle (whether one categorises it as an 'interruption principle' or as an 'integration principle') and its rationale to which I have just referred. There is nothing in domestic law which precludes that construction of 'sentence of imprisonment'. As Mr Lask submitted, there is no reason why imprisonment may not include other forms of detention: it all depends upon the context. I see no justification for limiting 'sentence of imprisonment' to adult offenders by construing it as referable only to sections 76 and 89 of the Sentencing Act. Not only would that narrow construction fail to give effect to the rationale for the interruption or integration principle in the CJEU jurisprudence, but it would mean that child and young offenders resident in the United Kingdom for a period of ten years prior to the date of an expulsion decision would always be entitled to enhanced protection when an expulsion decision was taken against them once they were adults, even if they had committed serious offences, for which they were sentenced to substantial periods of detention in a YOI, during that ten year period. Whilst it is correct that a member state is entitled in transposing a Directive into domestic law to provide for more favourable treatment than the Directive requires, I do not consider that this can have been the intention of Parliament. Had it been their intention, one would expect there to have been a specific 'carve out' to that effect in regulation 3. . . . In relation to Ms Dubinsky's submission that regulation 3(4)(a) fails to transpose properly the Directive, as Mr Lask pointed out, this issue was not fully argued and, in any event, the present case does not concern regulation 3(4) given that the overall assessment has yet to take place. What is clear is that regulation 3(4) does faithfully transpose the jurisprudence in Onuekwere and MG as the Explanatory Memorandum states. It may be that in Vomero and B the CJEU has taken a broader approach which might require fresh consideration of whether regulation 3(4) fully transposes the Directive. However, it is not necessary to decide that issue, which was not fully argued and does not arise, since this case does not concern regulation 3(4) but regulation 3(3). In any event, any problem with regulation 3(4) does not require the narrow interpretation of regulation 3(3) for which Mr Briddock and Ms Dubinsky contend. As I have already held, that narrow interpretation would fail to give effect to the interruption or integration principle and its rationale as it emerges from the CJEU jurisprudence."—*Secretary of State for the Home Department v Viscu* [2019] EWCA Civ 1052.

IMPROPER. "Be that as it may, in this case there was nothing before the judge by way of expert evidence from the defence expert, for example, which could have justified the epithet 'improper'. The way it was put in the defence submissions was that the expert had paid 'insufficient care'. The prosecution's expert's explanation, set out in the defence's Skeleton Argument before the judge, was that he had missed the fact that the image in question was in a 'Thumbs.db' file and that 'I missed that in the counting process'. This cannot be characterised as a clear and stark error, adopting Coulson J's formulation, or at least not in the absence of a qualitative assessment of how serious an error this was. We simply do not know, and more importantly the judge did not know, whether this is an easy mistake to make, or whether it is the sort of

mistake a first week trainee computer expert would not be expected to make."—*R (Director of Public Prosecutions) v Aylesbury Crown Court* [2017] EWHC 2987 (Admin).

IN ACCORDANCE WITH THE LAW. See LAW.

IN ANY WAY CONNECTED WITH. "The words used 'in any way connected with' the sale of the swap given their natural and ordinary meaning are very broad. There is nothing in the language or in the letter as a whole to suggest that the parties intended to limit this to claims or liabilities which were legally or causally connected to the sale of the swap. The words 'in any way' serve to reinforce a broad interpretation to the words 'connected with'. In my view a claim that the Bank has not discharged its obligations in relation to carrying out the review of the consequential loss incurred by the claimant as a result of being sold a swap, is a claim which is, in the ordinary sense of the words, 'connected with' the sale of the swap. No review would be necessary unless the claimant fell within those category of customers who had been sold a swap. The review arises only as a result of having entered into a swap and the purpose of the review is to determine whether any compensation is due in respect of the (alleged) losses suffered as a result of the sale. The claim that the review was carried out in a way which breached the claimant's rights is a challenge to the assessment of the loss suffered as a result of the sale and is therefore "connected with" the sale of the swap on a literal reading."—*Cameron Developments (UK) Ltd v National Westminster Bank Plc* [2017] EWHC 1884 (QB).

IN CHARGE FOR THE TIME BEING. "In our judgment, the words 'in charge for the time being' should not be understood in a particularly narrow (or indeed particularly expansive) sense. These are ordinary words which are capable of applying to a range of situations. The judgment in any case is very fact-sensitive, and it is one for the justice or the sheriff to make. For the reasons we have given, we have concluded that the concept of being in charge relates to whether the person in question has responsibility for the dog. It follows from what we have said that we would consider that it is at least possible for a person who walks a dog on a regular basis, and who has responsibility for the dog during that time, to be 'in charge for the time being' for the purpose of section 4B. There are likely to be exceptions to that general proposition, for example, where the person is walking the dog purely as the agent of another, in which case that person may not be 'in charge' for the purpose of that provision. The language of the statute is broad enough to encompass anyone who, for whatever reason and in whatever way, is in charge of the dog for the time being. It also follows that we reject Mr Ley-Morgan's submission that a volunteer cannot be a person in charge – such a person can be.

So far as timing is concerned, we reject the Secretary of State's submission that 'for the time being' must mean at the time of the seizure. Although that would, as a matter of timing, potentially include Mrs McCann who had contact with Sky while she was kennelled before she was seized, there are other situations in which it would not be appropriate to consider the person in charge at the moment of seizure. For example, it could be that the owner of the kennels where the dog has been housed since being seized wishes to apply (as in 'Stella's case'). Again, it may be that the erstwhile partner of the owner who had been the joint keeper with the owner seeks keepership where that person was not 'in charge' at the moment of seizure, perhaps because the relationship had recently broken down. Such a person may be able to demonstrate a track record of being in charge of the dog. There is no good reason, consistent with the

statutory purpose, why such persons should be excluded from section 4B(2A)(a). There are, however, some temporal limits on what 'for the time being' means. We note that Ms McGahey did not submit that the phrase could be interpreted to include proposed future contact. She was right not to do so, because the concept involves contact in the past or present. It cannot extend to the future."—*Webb v Avon and Somerset Constabulary* [2017] EWHC 3311 (Admin).

IN PARTICULAR. "Ms Anderson submitted that 'in particular' should bear its natural and ordinary meaning, but in my view that submission does not assist. There are two natural and ordinary meanings of the term. Similar problems arise with prepositions such as 'including'. In my judgment, the real question which always arises in this sort of case is as to how the term at issue should be construed in its particular context."—*JM (Zimbabwe), R. (on the application of) v Secretary of State for the Home Department* [2016] EWHC 1773 (Admin).

IN PURSUANCE OF. "In our view, the expression 'in pursuance of', in its ordinary and natural meaning means simply 'authorised by', 'in line with' or 'in accordance with' (compare, for example, *Saul v Norfolk County Council* [1984] Q.B. 559, at 566 where Slade L.J. held that the words 'in pursuance of' a particular statute naturally meant 'in exercise of the authority conferred by' the statute)."—*Z, R (On the Application Of) v Hackney London Borough Council* [2019] EWHC 139 (Admin).

IN RESPECT OF. "We agree that it is necessary to distinguish between cases where the connection between the incurring of expenses and a qualifying matter listed in Part I of Schedule 13 is sufficiently close or proximate for it to be said that the expenses were incurred 'in respect of' that matter and other cases where the connection is too remote to satisfy this requirement. If, for example, a person donates money to a permitted participant to be used for any referendum purpose that the donee wishes and the donee subsequently decides to spend the money on buying advertising, it would be plausible to say that the donor had not paid money or incurred expenses 'in respect of' advertising, even though that was what the donation was ultimately used for. By contrast, the expenses incurred by someone who purchases and pays for advertising services would plainly be incurred 'in respect of' advertising. But the words 'in respect of' are wide words, apt also to include cases where the connection between the expenses incurred and the qualifying matter is less direct. In *Albon v Naza Motor Trading Sdn Bhd* [2007] EWHC 9 (Ch), para 27; [2007] 1 WLR 2489, Lightman J quoted with approval the observation of Mann CJ in *The Trustees Executors & Agency Co Ltd v Reilly* [1941] VLR 110, 111, a case in the Supreme Court of Victoria, that: 'The words "in respect of" are difficult of definition, but they have the widest possible meaning of any expression intended to convey some connection or relation between the two subject-matters to which the words refer.' Thus, a payment made to a supplier of advertising services to defray the cost of such services purchased from the supplier seems to us on any reasonable understanding of the words to be a payment made 'in respect of' advertising, even if the person who makes the payment is not the person who contracted to purchase the services. Indeed, it would also be natural to describe a payment to the purchaser as a payment 'in respect of' advertising if it is made specifically in order to fund the purchase of advertising. At least in the first of these cases, to deny that the payment to the supplier has been made 'in respect of' advertising seems perverse. Counsel for the Electoral Commission did not put forward any reason for denying that there is a sufficient connection in such a case other than that, on the assumed facts, the payment would

constitute a donation to the purchaser for the purposes of Schedule 15 of PPERA. It is apparent that, as with its interpretation of the first element of the definition of 'referendum expenses', the Commission has been led to attribute an implausible meaning to the statutory language by its a priori conviction that, if a payment is a donation, it cannot be a referendum expense. We have indicated why in our opinion that conviction is misplaced."—*The Good Law Project, R (On the Application Of) v Electoral Commission* [2018] EWHC 2414 (Admin).

IN SITU REPLACEMENT. "The issue of construction which divides the parties is the meaning of 'in situ replacement' in claim 1 of the 163 patent and claim 1 of the 287 patent. It is common ground that the term has the same meaning in all the claims. Kymab's case was and remains that an in situ replacement requires a deletion (in the sense of a physical removal from the genome) of the murine variable gene segments, coupled with the insertion of the human variable segments in the same place. Regeneron's case was that all that is required by 'in situ replacement' is a replacement 'in the position of' the murine variable gene segment, and does not require deletion, a process which it described as 'positional replacement'. The issue is relevant to infringement because, in the Kymab constructs, the murine variable segments are inverted so that they appear in a different place in the genome where they substantially cease to function, but are not physically removed or deleted.... We can see no technical reason why the skilled person would understand that the patentee was using the phrase 'in situ replacement' to mean more than positional replacement. The specification does not contain any teaching that the mouse segments must necessarily be deleted or inactivated. This is made clear at [0125] of the specification which points out that the process may give rise to hybrid heavy chains, 'but it is preferable to proceed with subsequent steps that will eliminate the remainder of the mouse variable segments'. The suggestion that removal of all the mouse segments is 'preferable' makes it clear that mouse segments can be tolerated."—*Regeneron Pharmaceuticals, Inc v Kymab Ltd* [2018] EWCA Civ 671.

INACCURATE (DATA). Stat. Def., Data Protection Act 2018 s.205.

INCIDENT. Stat. Def. ("any event having an actual adverse effect on the security of network and information systems"), Network and Information Systems Regulations 2018 reg.1.

INCIDENTAL. "Whether a particular matter can be described as 'incidental', 'consequential' or 'supplementary' to the scheme sanctioned under section 111 is a fact sensitive enquiry. Accordingly, as with the potential second objection, the only question for me at this stage is whether the transfer of a part of BCSL's business is incapable of being so described. While the nature of the order sought is far removed from the nature of the orders made in earlier cases (save only that made in the JPM case), and it is much easier to describe the orders in those cases as 'incidental', 'consequential' or 'supplementary', I do not regard it as impossible to describe the transfer of BCSL's business as such in the context of this case. If (as I have assumed in relation to the second objection) BBI would be in practice unable to service the requirements of the transferring clients of BB unless BCSL's business was also transferred, then I consider then while it may be difficult to describe the order sought as 'incidental', it would not be a mis-use of language to describe it as 'consequential' or 'supplementary'."—*Barclays Bank Plc, Re* [2018] EWHC 2868 (Ch).

INDEMNITY. See ADEQUATE INDEMNITY.

INDIRECT ENCOURAGEMENT. "'Indirect encouragement' in s.2(3)(a) does not, in our view, need to be replaced by 'necessary implication', a phrase which is arguably less clear. In directing the jury on this point the judge said: 'Things which are likely to be understood by members of the public as indirectly encouraging them to commit, prepare, or instigate acts of terrorism are likely to include things which glorify the commission in the past, future, or generally of terrorist acts, and encourage that act to be copied. You decide whether that is what appears in these videos.' That explanation seems to us as being perfectly clear and adequate. As to 'some or all' in s.2(3) and 'one or more' in s.2(6) we do not think that in the circumstances of this case where the dissemination had been to two individuals, that any further explanation was required. Finally, the suggestion that 'with a view to' should have been explained as meaning 'with intent to' overlooks both the fact that the suggested phrase provides no meaningful additional explanation and the fact that in any event, the Crown was relying on s.2(2)(d), not s.2(2)(f)."—*Ali, R v* [2018] EWCA Crim 547.

INDOORS. Stat. Def. ("inside premises which—(i) have a ceiling or a roof; and (ii) except for any doors, windows or passageways, are wholly enclosed"), Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2.

INFORMATION. "I agree with the fundamental point made by Mr Milsom, that the concept of 'information' as used in section 43B(1) is capable of covering statements which might also be characterised as allegations. Langstaff J made the same point in the judgment below at [30], set out above, and I would respectfully endorse what he says there. Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between 'information' on the one hand and 'allegations' on the other. Indeed, Ms Belgrave did not suggest that Langstaff J's approach was at all objectionable. On the other hand, although sometimes a statement which can be characterised as an allegation will also constitute 'information' and amount to a qualifying disclosure within section 43B(1), not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision."—*Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436

INFORMATION NOTE. Stat. Def., Data Protection Act 2018 s.181.

INJUNCTION. See SPRINGBOARD INJUNCTION.

INJURY OR DAMAGE. Stat. Def., Space Industry Act 2018 s.69.

INSTALLATION. Stat. Def. ("includes any works or object"), Works Detrimental to Navigation (Powers and Duties of Inspectors) Regulations 2018 reg.2.

INSURANCE. See EXPERIENCE OF INSURANCE AND REINSURANCE.

INTEGRITY. "Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty. In this regard, I agree with the observations of the Divisional Court in Williams and I disagree with the observations of Mostyn J in Malins. Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted. In professional codes of conduct, the term 'integrity' is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in Williams at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards. I agree with Davis LJ in Chan that it is not possible to formulate an

all-purpose, comprehensive definition of integrity. On the other hand, it is a counsel of despair to say: 'Well you can always recognise it, but you can never describe it.' The broad contours of what integrity means, at least in the context of professional conduct, are now becoming clearer. The observations of the Financial Services and Markets Tribunal in Hoodless have met with general approbation. Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse. The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors: i) A sole practice giving the appearance of being a partnership and deliberately flouting the conduct rules (*Emeana*); ii) Recklessly, but not dishonestly, allowing a court to be misled (*Brett*); iii) Subordinating the interests of the clients to the solicitors' own financial interests (Chan); iv) Making improper payments out of the client account (*Scott*); v) Allowing the firm to become involved in conveyancing transactions which bear the hallmarks mortgage fraud (*Newell-Austin*); vi) Making false representations on behalf of the client (*Williams*)."—*Wingate v The Solicitors Regulation Authority* [2018] EWCA Civ 366.

INTELLIGENCE SERVICE. Stat. Def., Data Protection Act 2018 s.82.

INTENDS. See PROPOSES.

INTERCEPT. [*at end of definition, add:*] Investigatory Powers Act 2016 s.4.

INTEREST. "The 2006 Act contains no definition of 'interest', or what constitutes being 'interested in' a proposed transaction. The question therefore has to be answered by reference to the case law. We agree with Mr Vineall that the question, in the particular circumstances of this case, is whether the Tribunal was correct in law to conclude that, by virtue of the fact that Ms Burns was, at the very time the proposed transaction was being considered by her investment committee, soliciting Vanguard for employment or appointment, she was 'in any way, directly or indirectly interested' in the proposed transaction between MGM and Vanguard.... These points were again emphasised by Lord Upjohn, as he had by then become, in *Boardman v Phipps* [1967] 2 AC 46 at 123-124. Referring to Lord Cranworth's statement of principle in Aberdeen Railway, Lord Upjohn said at 124B: 'The phrase "possibly may conflict" requires consideration. In my view it means that the reasonable man looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict; not that you could imagine some situation arising which might, in some conceivable possibility in events not contemplated as real sensible possibilities by any reasonable person, result in a conflict.' This passage shows that the relevant test is an objective one, and that 'a real sensible possibility of conflict' suffices. It is clearly not necessary that the possibility should have already matured into an actual and existing conflict of interest. See too the speech of Lord Cohen at 103G-104A."—*Burns v The Financial Conduct Authority* [2017] EWCA Civ 2140.

"The use of the word 'interest' to describe the sums payable in both sets of circumstances indicates that, as a matter of language and common legal usage, it is not confined to cases in which the payment accrues due prospectively as it would do under a loan. It is therefore common ground on this appeal that statutory interest is 'interest'

within the meaning of s.874 and that the administrators' argument that it is not 'yearly interest' turns on the meaning and effect of the word 'yearly'. The point is in any event concluded by authority because in *Riches v Westminster Bank Ltd* [1947] AC 390 the House of Lords decided that a sum of money awarded as interest under s.3(1) of the Law Reform (Miscellaneous Provisions) Act 1934 (now re-enacted as s.35A SCA 1981) as part of a judgment sum was 'interest of money' within Schedule D of the Income Tax Act 1918 so as to be payable under deduction of tax under rule 21 of the All Schedules Rules of the Act. … In my view it would be wrong to treat such statutory interest under the Insolvency Rules as a short-term liability of this kind. Unlike, for example, the indebtedness under the local Act in *Gateshead Corporation v Lumsden* which could have been called in at any time, the obligation of the administrators to pay interest on the proved debts was unlimited in point of time under rule 2.88(7) (and now rule 14.23(7)), was calculated (where the Judgment Act rate applies) by reference to a per annum rate of interest, contemplated a period of administration which could in many cases last over a prolonged period of time and did in fact endure for a number of years. It did therefore satisfy the definition in *Bebb v Bunny* in that it was payable from year to year whilst accruing from day to day. Unless the fact that it did not accrue prospectively in real time is fatal to the contention that it is yearly interest which, in the light of the authorities, it is not, I can see nothing in the Insolvency Rules or the other relevant surrounding circumstances which prevents it from being treated as the long-term liability which it in fact was."—*Revenue And Customs v Lomas (Administrators of Lehman Brothers International (Europe))* [2017] EWCA Civ 2124.

INTERESTS. "Obviously, 'interests' can include proprietary or other pecuniary interests but, as is illustrated by the authorities, the expression can have a wider meaning."—*Macaulay, Opinion of the Inner House of the Court of Session in the Special Case Stated by the Scottish Land Court at the Request of Against Mrs Mary Ann Morrison and Mark Tayburn* [2018] ScotCS CSIH 50.

INTERESTED. "The question is, therefore, what the words 'interested in' mean in clause 13.2.3 of the contract interpreted in accordance with conventional usage and I find it impossible to say of a person holding shares in a company that he or she is not 'interested in' the business of the company. Conventionally those words have that meaning not merely in common parlance and in dictionaries but also in authority."—*Tillman v Egon Zehnder Ltd* [2017] EWCA Civ 1054.

INTERNATIONAL MARITIME TRAFFIC. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

INTERNATIONAL OBLIGATION OF THE UNITED KINGDOM. Stat. Def., Data Protection Act 2018 s.205.

INTERNATIONAL ORGANISATION. Stat. Def., Data Protection Act 2018 s.205.

INTRINSIC. "My difficulty is with the word 'intrinsic' itself and what it means in this context. It is possible to describe things or people as having certain intrinsic qualities or characteristics, but it is a more elusive term when used as a descriptor of a relationship between two transactions. Take Lord Hobhouse's example of a pension scheme mis-sold to a group of investors in the same venture by use of the same document. On one interpretation of the Court of Appeal's formula it could be said that there was no 'intrinsic' relationship between the matters giving rise to the investors' claims, because their only connection was an 'extrinsic' relationship with the third

party who sold the pension to all of them. If so, the addition of sub-clauses (iii) and (iv) will not have helped to resolve the point of difference between Lords Hoffmann and Hobhouse; and if Lord Hoffmann's view is to be preferred, there would be no right to aggregate in such a case. It is hard to suppose that the Law Society so intended when it introduced the new sub-clauses."—*AIG Europe Ltd v Woodman* [2017] UKSC 18.

INVENTED NAME. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

ISOLATED. "The word 'isolated' is not defined in the NPPF. I agree with the Defendants' submission that 'isolated' should be given its ordinary objective meaning of 'far away from other places, buildings or people; remote' (Oxford Concise English Dictionary)."—*Braintree District Council v Secretary of State for Communities and Local Government* [2017] EWHC 2743 (Admin).

ISSUING. "This case turns on the meaning of the term 'issuing'. The Appellant was convicted on 17 August 2018 by the North Staffordshire Magistrates of an offence of speeding contrary to a Local Traffic Order and Sections 84 and 89(1) of the Road Traffic Regulation Act 1984 and Schedule 2 to the Road Traffic Offenders Act 1988. He has admitted the facts alleged. The defence advanced, and the basis of the appeal by way of case stated, is that the written charge in the case was not 'issued' within the six months period specified by Section 127(1) of the Magistrates' Courts Act 1980 ['the 1980 Act']. The Appellant contends that proceedings cannot be 'issued' unless and until the relevant document (the written charge) 'is in the public domain at least to the extent that it has left the relevant prosecutor's office'. The Respondent argues that the only way in which to make sense of the wording of [section 29 of the Criminal Justice Act 2003 ['the 2003 Act']] is to interpret the word 'issuing' as meaning what happens when the written charge is produced by the prosecutor in a form that is ready for service.... I reject the submission of the Appellant that the issuing of a written charge only arises when the written charge, itself comprised in the document, is posted as the acceptable means of service to the relevant defendant. The 'issuing' of the written charge and service are discrete steps, as the legislation and the Criminal Procedure Rules make clear. I also reject the submission that the information contained in the written charge must be in the public domain, in the sense of being placed before a Court or being served, before issue can be held to be complete. That would be to reconstitute the former two-step procedure in a different form. In my judgment, the submission that some intervening steps between the completion of the written charge as a document in its final form, and the service process, could in some way complete the process of 'issuing' cannot possibly be right. The only intervening steps might be checking the postal address of the relevant defendant and placing the written charge in an envelope. There is no evidence of the first as part of the process. The second cannot possibly be part of the issuing process. Once it is recognised that the issuing of the written charge and service on the defendant are separate steps, to my mind these arguments make no sense."—*Brown v Director of Public Prosecutions* [2019] EWHC 798 (Admin).

IVORY. For the purposes of the Ivory Act 2018, which prohibits the purchase, sale, hire, import and export of ivory except in specified circumstances, ivory from the tusk or tooth of an elephant (s.37). Regulations made under that section may amend the definition to include ivory from any other animal or species (whether extant or not).

J

JUDGMENT DEBT. "In my view, a liability order in the context of the enforcement of council tax does not fall within that definition of 'judgment debt'. It is not an order of a Magistrates' Court for the payment of money recoverable summarily as a civil debt. Further sub-paragraph (i) expressly excludes a judgment or order made by a Magistrates' Court in other circumstances."—*Powys County Council v Hurst* [2018] EWHC 1684 (Admin).

JUDICIAL AUTHORITY. "I do not consider that the SCI's reference to the CJEU in Lisauskas casts any doubt on this analysis. In my respectful view, it is clear that 'judicial authority' has an autonomous meaning in European law. While the CJEU may well take into account what national law has to say about whether the Lithuanian prosecutor 'administers justice', I consider it vanishingly unlikely that the CJEU would treat that as decisive in its assessment. I consider it far more likely that, as hitherto, the CJEU will take a schematic approach, according to which it assumes that any public prosecutor does administer justice and/or (if different) participates in the administration of justice, and is, therefore, a judicial authority."—*Krupeckiene v Public Prosecutor's Office Lithuania* [2019] EWHC 569 (Admin).

JURISDICTION. "The word 'jurisdiction' is a slippery one. The first of the issues I have identified above could be more conventionally formulated as asking 'whether the court has jurisdiction to permit service of the claim out of the jurisdiction'. Posing the question in that way reveals immediately that the word 'jurisdiction' is being used in two quite different senses. In the second use of the word it is describing a territory: namely England and Wales. In the first use of the word it may be describing one of two things: whether the court has power to permit service outside England and Wales, or whether, assuming that it does have power, there are settled principles on which that power is exercised. The point was made by Pickford LJ in *Guaranty Trust Co of New York v Hannay & Co* [1915] 2 KB 536, 563. He said: 'The first and, in my opinion, the only really correct sense of the expression that the court has no jurisdiction is that it has no power to deal with and decide the dispute as to the subject matter before it, no matter in what form or by whom it is raised. But there is another sense in which it is often used, i.e. that although the court has power to decide the question it will not according to its settled practice do so except in a certain way and under certain circumstances.'"—*Orexim Trading Ltd v Mahavir Port and Terminal Private Ltd (formerly Fourcee Port and Terminal Private Ltd)* [2018] EWCA Civ 1660.

JUST. "The word 'just' means just in all the circumstances, bearing in mind that the purpose of such orders is the advancement of the public interest in confiscating the proceeds of crime." *Mundy, R v* [2018] EWCA Crim 105.

JUST AND EQUITABLE. "Thirdly, the phrase 'just and equitable' does not confer a general power on tribunals to award what they think ought to be awarded in a form of 'palm tree justice.' As Lord Steyn made clear in *Dunnachie*, that phrase simply addresses the fact that, in the relatively informal setting of an employment tribunal, it

may not be appropriate to expect an unrepresented litigant to produce a detailed schedule of loss of the type that might be expected in ordinary civil litigation. That phrase is not broad enough to confer jurisdiction to award compensation for injury to feelings, as the EAT appears to have thought in Brassington. If it were that broad, there would be jurisdiction to make such an award in unfair dismissal cases, which *Dunnachie* holds authoritatively that there is not."—*Gomes v Higher Level Care Ltd* [2018] EWCA Civ 418.

K

KEEPS. "Although there is no statutory interpretation within the Animal Welfare Act 2006 of the word 'keeps' the starting point is that the word should be given its ordinary natural meaning. By such a meaning a person may keep an animal by having actual physical possession but also by requesting another to keep it for them. The word includes an assumption of a level of control over the animal whether at the Applicant's home or at the home of another. In either event the animal is still being kept by the Applicant."—*Wright v The Reading Crown Court* [2017] EWHC 2643 (Admin).

KIRPAN. At the Third Reading of the Bill for the Offensive Weapons Act 2019 in the House of Lords the Minister said as follows: "As noble Lords will recall, we held a round table on the issue of kirpans following the debate on these clauses in Grand Committee. This identified a gap in the current defences in that the cultural practice of gifting large ceremonial kirpans by Sikhs to eminent non-Sikhs was not covered by the 'religious reasons' defence. These amendments will therefore create a defence for a person of Sikh faith to present another person with a curved sword in a religious ceremony or other ceremonial event, as covered by Section 141 of the Criminal Justice Act 1988. These amendments will also create a defence for Sikhs of possessing such swords for the purposes of presenting them to others at a ceremony and for the recipients of such a gift to possess swords that have been presented to them. The amendments also ensure a defence is available for the ancillary acts, such as manufacture, sale, hire or importation, where those acts are for the purpose only of making the sword available for such presentation. Finally, the amendments enable the Department of Justice in Northern Ireland to commence the provision in relation to Northern Ireland, other than in relation to importation, which is a reserved matter. As noble Lords will be aware, the amendments do not mention the word 'kirpan'. Kirpans vary considerably in their size and shape, with the only common factor being their association with the Sikh faith. It would not be possible to include a defence for kirpans without defining them legally. However, we are clear that these defences are specifically aimed at kirpans and we will include a reference to kirpans in the final Explanatory Notes for the Bill. We will also make it clear in the statutory guidance that defences of 'religious reasons' and gifting by ceremonial presentation include, in particular, the possession, supply and gifting of kirpans for those purposes. We will certainly continue to engage with Sikh organisations, including Sikhs in Politics, when we develop the statutory guidance."

KNIFE CRIME PREVENTION ORDER. Stat. Def., Offensive Weapons Act 2019 s.14.

L

LAND. Stat. Def. (disapplying Interpretation Act 1978 definition), Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

LAND TRANSACTION. Stat. Def., Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 s.3.

LANDING AND TAKE-OFF CYCLE. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

LANDLORD. "The question in the present case is whether a notice that the respondents, who own the relevant premises, served on the appellants, who are assured shorthold tenants, satisfied the requirements of section 21(1)(b) of the 1988 Act. The respondents maintain that it did. The appellants dispute that on the basis that the respondents were not at the date of the notice 'the landlord' within the meaning of section 21(1)(b).... Taken at face value, this language might suggest that the Court should be focusing on the position at the date of the hearing and, hence, that it is good enough that the requisite notice has been given by the person who is then the 'landlord'. However, Mr Asela Wijeyaratne, who appeared for the respondents, did not espouse this interpretation, and he was clearly right not to do so. The construction would make no sense and cannot have been Parliament's intention. It would imply that a notice could have been given by someone who was not the 'landlord' (and might, in fact, have had no interest at all in the property) either when the notice was served or on the date specified as that on which possession was required. It would suffice that the person had become the 'landlord' by the time the case was before the Court.... In the first place, I can see no basis at all for concluding that the Agency was not a 'landlord' of the appellants at the date the notice was served on them for the purposes of section 21 of the 1988 Act. The simple fact is that, until the mesne tenancy came to an end on 19 March 2016, the Agency had a direct landlord-tenant relationship with the appellants. Mr Wijeyaratne suggested that the Agency should not be viewed as a 'landlord' for section 21 purposes because it could no longer give the appellants the necessary two months' notice before its own tenancy expired, but (a) the Agency could perfectly well have given more than two months' notice of the 19 March date until a number of days after 12 January, when the respondents gave notice to the appellants, (b) the 1988 Act nowhere says that a mesne tenant cannot give notice under section 21 for a date later than that on which its own tenancy is to end and (c) there is nothing in the 1988 Act, either, to indicate that a mesne tenant whose tenancy is terminating within two months is no longer a 'landlord' within the meaning of section 21. Mr Wijeyaratne accepted that the Agency remained a 'landlord' in other contexts, but it seems to me that it must also be considered to have been one for the purposes of section 21. It would appear to follow that, were Mr Wijeyaratne correct that the respondents were themselves a 'landlord' as regards the notice, 'the landlord' would have comprised both the respondents and the Agency and, accordingly, that any notice should have been given by them jointly. In fact, however, it seems to me that, at the

date of the notice, the respondents were not a 'landlord' of the appellants for either section 21 or other purposes. The respondents were not at that time persons who, 'but for the existence of an assured tenancy would be … entitled to possession' of the relevant premises. Had the appellants' tenancies not existed, the respondents would still not have been entitled to possession: the Agency, whose tenancy was as yet in being, would have been. Mr Wijeyaratne's submissions in effect involve reading into the definition of 'landlord' in section 45 of the 1988 Act words such as 'at the date specified in a notice under section 21(1)(b) as that on which possession is required', but there is no warrant for that in the terms of either section 21 or 45. The definition of 'landlord' can aptly be understood as simply referring to what the position would be if at the particular time the assured tenancy did not exist. There is no need to look to the future.... Mr Wijeyaratne suggested that it would be unsatisfactory if a superior landlord had to wait until the mesne tenancy had been determined before giving notice under section 21 of the 1988 Act. It would, however, be possible for the mesne tenant to give notice in the meantime; a landlord could alleviate any potential inconvenience by providing for that in its agreement with the mesne tenant; and in any event the appellants' construction of the 1988 Act could not necessitate more than two months' delay. In short, I agree with Mr Chataway that: i) To be effective, a notice under section 21 of the 1988 Act must come from the 'landlord' at the date that the notice is given; ii) Where a mesne tenancy exists, the fact that it is to come to an end by the date specified in a section 21 notice will not render the head landlord a 'landlord' at the date of the notice; iii) In the present case, the only 'landlord' when the respondents gave notice to the appellants was the Agency; iv) The notice did not, therefore, satisfy the requirements of section 21(1)(b)."—*Barrow v Kazim* [2018] EWCA Civ 2414.

Stat. Def., Tenant Fees Act 2019 s.28.

LASER. "The Bill does use the term 'laser beam', but I can assure noble Lords that the Bill is not limited to any particular type of laser and that all variants of laser should be captured by this. Following the helpful contributions of the noble and gallant Lord, Lord Craig, at Second Reading, I sought further expert clarification on the definition of a laser, including from the Department for Transport's chief scientific adviser. All types of lasers emit focused beams. Therefore, despite the varying properties that different types of lasers will have, all will still produce a beam, and it is this beam that will dazzle or distract the person in control of the vehicle. The term 'laser' would cover the pulse and burst laser products that the noble and gallant Lord referred to. These products still emit a laser beam, just of a shorter duration. Short-duration laser beams can be very intense and transmit as much power in the pulse as a lower-power continuous laser, so I agree it is important that these are included in the Bill. We expect the courts to interpret 'laser' with this wide definition. The term 'laser' is generally used to refer to the machine or equipment used to produce a particular form of light—in other words, to the device itself. This is how the term has previously been used in legislation, including the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Work at Height) Regulations 2010 and the Control of Artificial Optical Radiation at Work Regulations 2010. It is also how the Oxford English Dictionary defines it. Therefore, we do not believe that adding a reference to 'device' is necessary. Our legal advice is that the term 'beam' is better than 'device' as it refers to the light emitted by the equipment and it is this which can dazzle or distract. It is for these reasons that the clause uses the term 'laser beam'. On the noble and gallant Lord's question about power, this is not included in the Bill because it will be the

beam dazzling or distracting, or being likely to do so, that will be an offence, regardless of the power." Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) speaking in Committee on Bill for the Laser Misuse (Vehicles) Act 2018 on 23 January 2018.

LASER BEAM. Stat. Def. ("a beam of coherent light produced by a device of any kind"), Laser Misuse (Vehicles) Act 2018 s.3.

LAUNCH (SPACE CRAFT). Stat. Def., Space Industry Act 2018 s.69.

LAW. "It is well established that 'law' in the Human Rights Convention has an extended meaning. In two judgments delivered on the same day, *Huvig v France* (1990) 12 EHRR 528, at para 26, and *Kruslin v France* (1990) 12 EHRR 547, para 27, the European Court of Human Rights set out what has become the classic definition of law in this context: 'The expression "in accordance with the law", within the meaning of article 8.2, requires firstly that the impugned measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law.' . . . It is well established that guidance provided for by statute may constitute 'law' for the purpose of the Convention: *R (Purdy) v Director of Public Prosecutions* [2010] AC 345, para 47 (Lord Hope). The judgment of the chief officer is subjected to carefully drawn constraints that themselves have the quality of law."—*Gallagher for Judicial Review (NI)* [2019] UKSC 3.

LEGAL ADVISER. Stat. Def. ("a detained person's counsel, representative or solicitor, and includes a clerk acting on behalf of that solicitor"), Short-term Holding Facility Rules 2018 rule 2.

LEGAL DUTY. "Section 3 [of the Fraud Act 2006], however, is specific that for criminal culpability to attach there must be a 'legal duty' to disclose such information. The phrase 'legal duty' is not defined in the 2006 Act. But there is a very helpful discussion both in the report of the Law Commission which preceded the 2006 Act and also in the Explanatory Notes to the 2006 Act itself. This court is aware of the formal limitations in general terms on reliance on such materials in construing an Act of Parliament. In the present context, however, it is appropriate to take them into account. . . . So far as section 3 of the Fraud Act 2006 itself is concerned, that is clearly designed to create a new offence. This section extends beyond dishonest positive representations, be they express or be they implied, which are covered by section 2 of the 2006 Act. Section 3 instead relates to dishonest non-disclosure of information where there is a legal duty to disclose. This is a new offence. (Indeed a further new offence is created by section 4 of the 2006 Act relating to fraud by abuse of position.) Dishonest non-disclosure in fact was potentially capable, in appropriate factual circumstances, of giving rise to criminal liability under the provisions of the Theft Act 1968: see for example the case of Firth (1989) 91 Cr.App.R 217. But section 3 of the 2006 Act is plainly designed both to supersede and to supplement the previous legal position prevailing and consequently it should be treated as an entirely new provision. It is a point also to be noted, at all events, that in the present case the prosecution have not sought, by reference to the factual matters covered by count 6, to advance any case of implied false representation. The prosecution have pinned their colours for the purposes of count 6 to section 3 of the 2006 Act. Section 3, however, is specific that for criminal culpability to attach there must be a 'legal duty' to disclose such information. The phrase 'legal duty' is not defined in the 2006 Act. But there is a very

helpful discussion both in the report of the Law Commission which preceded the 2006 Act and also in the Explanatory Notes to the 2006 Act itself. This court is aware of the formal limitations in general terms on reliance on such materials in construing an Act of Parliament. In the present context, however, it is appropriate to take them into account. . . . There can be no real doubt that on the assumed facts, and assuming that the defendant had herself been resident throughout at this property, as well as being its owner, she would have been legally obliged to pay the due amount of council tax. If she did not, the council could, on demand made under the statutory scheme, seek recovery of the sums due in the civil courts. But that cannot of itself, as we see it, connote that she was obliged in law to notify the council of her continued residence. It is quite wrong to equate a liability to pay with a liability to notify. It may be, as the judge thought, that one might have expected to find such a provision as to notification in the statutory scheme. But that was a matter for Parliament to decide. The fact is, as we have said, that such a provision simply is not there, either within the primary legislation or in subordinate legislation made pursuant to the provisions of the 1992 Act itself. Mr Dennis sought to say that such an obligation of notification was to be implied into the legislative scheme, either as a matter of 'public policy' or as a matter of 'common sense' or both. We can accept that there may sometimes be occasions where implications can properly be made into a statutory provision where it is necessary or proper to do so. But we consider, most emphatically, that that is not the proper interpretative approach available here. . . . There is no room for the statutory implication of a legal duty to notify as contended for by the prosecution."—*D, R. v* [2019] EWCA Crim 209.

LEGAL PROCEEDINGS. "The preliminary issue here is the true interpretation of the words 'legal proceedings' in paragraph 10 of Schedule 7 to the DPA (set out in the Appendix to this judgment). In my judgment, these words refer to legal proceedings in any part of the UK. Parliament has not expressly limited the words 'legal proceedings' to proceedings in the UK. But in general it is presumed that Parliament does not intend to legislate for events which occur outside the territory of the relevant parts of the United Kingdom. That presumption is reinforced by the fact that, in creating the Legal Professional Privilege Exception, Parliament was exercising the member state option in Article 13(1)(g) of the Directive. It could, therefore, legislate only for measures to safeguard 'the rights and freedoms of others'. Privilege is a fundamental human right (see *R. (o/a Morgan Grenfell Ltd v Special Commissioners of Income Tax* [2003] 1 AC 563). In the context of a member state option, those rights must be the rights recognised by the relevant member state under its own law. So, when paragraph 10 refers to legal professional privilege which may be recognised in legal proceedings, it means proceedings in any part of the UK. That is the only form of privilege which the domestic rules of the law of any part of the UK recognise."—*Dawson-Damer v Taylor Wessing LLP* [2017] EWCA Civ 74.

LEGALITY. "198. (T)he principle of legality is a principle of statutory interpretation. In the absence of express language or necessary implication to the contrary, general words in legislation must be construed compatibly with fundamental human rights because Parliament cannot be taken to have intended by using general words to override such rights. (See, for example, *Ex parte Simms* [2000] 2 AC 115 at [131]; *Ahmed v Her Majesty's Treasury* [2010] 2 AC 534 at [111] – [112]; *Axa General Insurance Ltd v HM Advocate* [2012] 1 AC 868; *Guardian News and Media Ltd v City of Westminster Magistrates' Court* [2013] QB 618 ; *Evans v Attorney General* [2015]

AC 1787.) Once again, the judge in the present case expressed the matter with total clarity when he observed (at [269]) that 'the principle of legality … is a principle of statutory interpretation, not a broad principle as to how the courts should develop the common law.'"—*Al-Saadoon* [2017] 2 WLR 219.

LESS FAVOURABLE TREATMENT. "First, 'less favourable treatment' requires no more than the identification by the court of some denial of an advantage, benefit or choice which was or would have been afforded to the comparator. It is a concept separate from that of impact or damaging consequences. For example, the denial of a reference for the purposes of future employment would qualify, whether or not that reference would have been helpful. To my mind, the clearest analysis of these concepts is to be found in the Opinion of Lord Hoffmann in *Chief Constable of West Yorkshire Police v Khan* [2001] 1 WLR 1947, paragraphs 51–53 (but see also *Shamoon* at paragraphs 34–35).

Secondly, although there has been a tendency in some places to equate 'less favourable treatment' with that of 'detriment', they are conceptually distinct (see Lord Hoffmann in *Khan*, paragraph 53). That said, as Lord Hoffmann continues: 'But, bearing in mind that the employment tribunal has jurisdiction to award compensation for [there is a typographical error in the Law Report] injury to feelings, the courts have given "detriment" a wide meaning. In *Ministry of Defence v Jeremiah* [1980] QB 87, 104 Brightman LJ said that "a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment".' [Brightman LJ's dictum was also approved by the House of Lords in *Shamoon*]."—*Interim Executive Board of X School v Chief Inspector of Education, Children's Services and Skills* [2016] EWHC 2813 (Admin).

LETTING AGENCY WORK. Stat. Def. ("means things done by a person in the course of a business in response to instructions received from—(a) a landlord who is seeking to find another person to whom to let housing, or (b) a tenant who is seeking to find housing to rent."), Tenant Fees Act 2019 s.27.

LETTING AGENT. Stat. Def., Tenant Fees Act 2019 s.27.

LIABILITIES. "*Powys* raises a single ground of appeal, namely that the conclusions reached by the judge on the law were wrong. In particular, it is said that the judge erred in holding that the word 'liabilities' under article 4 of the 1996 Order encompassed liabilities arising under legislation which had not yet come into force.... The judge accepted that there had been no decided case where the word 'liabilities' in the context of transfer orders had been held to include a potential liability arising from a change of law after the date of the transfer. Nevertheless, he gave three reasons for distinguishing *Transco*.... In his speech in *Transco*, with which Lord Walker and Lord Mance agreed, Lord Neuberger made clear (at [35]) that contingent liabilities which existed at the time would be liabilities within the 1948 and 1986 Acts. Accordingly, had Part IIA been in force in 1996 when the transfer from Brecknock to Powys took place, I consider that Brecknock would have been subject to a contingent liability under Part IIA which would have passed to Powys under Article 4 of the 1996 Order with the result that Powys would be an appropriate person."—*Powys County Council v Price* [2017] EWCA Civ 1133.

LICENCE TO OCCUPY HOUSING. Stat. Def., Tenant Fees Act 2019, s.28.

LIKELY. "'Likely' in s.2(3) is an ordinary, comprehensible word; replacing it with 'probable' would not have assisted the jury further."—*Ali, R v* [2018] EWCA Crim 547.

"I have applied careful judgement in determining whether an adverse effect is 'likely' in considering the Statutory Question. I have also taken advice from Counsel on how this term might be interpreted by the Court. A literal definition of 'likely' is an event which has in excess of a 50/50 probability of occurrence – [i.e.] more likely than not. However, in some circumstances 'likely' can include events with a lesser probability. I consider that adopting the former of these definitions would create a hurdle too high in the context of applying a reasonable judgement. Therefore I have applied a lower hurdle so as to include events which are a realistic possibility. This is consistent with a recent legal judgement which referred to 'likely' being 'a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case' [per Snowden J in *FCA v. Da Vinci* (2015) EWHC 2401 at paragraphs 257-258 referring to Lord Nicholls in *Re H* [1996] AC 563]."—*Barclays Bank Plc And Woolwich Plan Managers Ltd, Re* [2018] EWHC 472 (Ch).

LIQUIDATED PECUNIARY CLAIM. For different opinions on the meaning of this term in s.29 of the Limitation Act 1980 see *Creggy v Barnett* [2016] EWCA Civ 1004.

LIQUIDITY. "'Solvency' is a word that can have various significations, but for present purposes we intend it to mean balance sheet solvency: a comparison of total assets and total liabilities, with a view to determining whether the overall value of the assets is adequate to meet the liabilities. 'Liquidity', by contrast, relates to the ability of a company or other trading entity to meet its debts as they fall due; it is generally dependent on cash flow."—*Liquidators of Grampian MacLennan's Distribution Services Ltd Reclaiming Motion by, v Carnboe Estates Ltd* [2018] ScotCS CSIH 7.

LOAN. "Peer-to-peer loan". Stat. Def., Income Tax Act 2007 s.412I as inserted by the Finance Act 2016 s.32.

LOBSTER POT PRINCIPLE. "It can be seen, therefore, that in each case the effect of Regulations 8 and 13 together was to preclude the Claimants from re-claiming their previous legacy benefits and receiving payments at the level to which they were formerly entitled. This is known, colloquially, as 'the lobster pot' principle: once in, there is no way back. As Dr Fannon, Universal Credit Policy team leader, made clear in her evidence, the 'lobster-pot' principle is a cornerstone of UC policy.... I have reluctantly reached the conclusion that Mr Brown is right and that, on the evidence in this case, it cannot be said that the differential treatment of these Claimants, as a result of which there was no transitional protection available to cushion their transfer to UC in 2017, lacked consideration so as to render it manifestly without reasonable foundation. That is my conclusion from the perspective of each of the proposed comparator groups, even if my conclusions on comparability/status in [55]-[57] above are wrong."—*TD v The Secretary of State for Work And Pensions* [2019] EWHC 462 (Admin).

LOCAL AUTHORITY. Stat. Def., Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2.

LOCAL POLICE AREA. Stat. Def. ("in relation to a person, means—(a) the police area in which the person's home address is situated, (b) in the absence of a home address, the police area in which the home address last notified is situated (whether that notification was in accordance with the requirements imposed by section 9 or in accordance with notification requirements under Part 2 of the Sexual Offences Act 2003), or (c) in the absence of a home address and of any such notification, the

police area in which the magistrates' court which last made a stalking protection order or an interim stalking protection order in respect of the person is situated"), Stalking Protection Act 2019 s.14.

LOCKER. Stat. Def. ("means a lockable container to which the corrosive product is delivered with a view to its collection by the buyer, or a person acting on behalf of the buyer, in accordance with arrangements made between the seller and the buyer"), Offensive Weapons Act 2019 s.3(7).

LONG LEASE. Stat. Def., Tenant Fees Act 2019 s.28.

LORRY SURFING. "'Lorry surfing' is where someone climbs onto a vehicle or its trailer on the highway without the consent of the driver or owner. I saw an incident where the vehicle was moving slowly and a protestor climbed onto it. Once the protestor climbed onto the vehicle, it had to be stopped until such time as the protestor could be persuaded to come down, or be removed from, the vehicle. Lorry surfing is a trespass to goods. It is also a criminal offence contrary to section 22A of the Road Traffic Act 1988 if the person intentionally and without lawful authority or reasonable cause interferes with a motor vehicle in such circumstances that it would be obvious to a reasonable person that to do so would be dangerous."—*UK Oil & Gas Investments Plc v Persons Unknown Who Are Protestors* . . . [2018] EWHC 2252 (Ch).

M

MAIN NAVIGABLE CHANNEL. "The first issue is the proper construction of the phrase 'main navigable channel' in section 4 of the 1971 Act.... What then is the proper construction of the phrase 'main navigable channel' in Part II of the 1971 Act? It seems to me that taking into account both the legislative and the policy context and the purpose of the 1971 Act itself, it cannot be correct that the phrase 'main navigable channel' is confined to the deepest part of any river, canal or navigation which is used from time to time as a thoroughfare or fairway. It seems clear from the Preamble to the 1971 Act that its purpose or aim was the imposition of a licensing system in order properly to regulate the use of waterways and to raise revenue for the provision of related services. With that context in mind, Mr Moore's construction would make a nonsense of the control and registration provisions contained in the 1971 Act and would render their operation all but impossible. It would be surprising if 'main navigable channel' were construed in a way which only required licences to be obtained in respect of a narrow band of unmarked and undefined water in the centre, or perhaps not in the centre of the river or canal. It would render the entire regime of the 1971 Act unworkable. On that basis, it seems to me that the statutory context is such that Mr Ravenscroft's interpretation cannot be correct.... It seems to me that the power in section 4(2) of the 1971 Act is not apt to enable the production of a map by order of the Secretary of State each time the route of the thoroughfare of a waterway changes. If Mr Moore were right, it would be necessary to conduct frequent surveys of all inland waterways for which CRT is responsible in order to obtain up to date details of the position of the deepest channel and to record the same on a map made by order of the Secretary of State. It seems to me that the map produced to Mr Moore as a result of his Freedom of Information request in 2011 takes the matter no further forward. It is not suggested that the map was produced pursuant to section 4(2) of the 1971 Act or that anything can be gleaned from the comments made by the Customer Service Co-Ordinator.

I also agree with Mr Stoner that his wider construction is consistent with the existence of the strict liability offences in sections 5(2) and 9(4) of the 1971 Act. If 'main navigable channel' were construed in the way which Mr Moore suggests there would be no certainty as to whether those offences had been committed. In my judgment, it cannot have been Parliament's intention to create strict liability offences the parameters of which are uncertain. Further, although I place much less weight upon it, I also agree with Mr Stoner that his wider construction is also consistent with the very wide definition of 'pleasure boat' in the 1971 Act.

The wider construction is also consistent with section 5(1) of the 1971 Act which includes the term 'keep' and 'let for hire'. If Mr Moore's construction were correct, a pleasure boat certificate would only be required if a vessel were 'kept' or 'let for hire' in the thoroughfare of the river in question. It seems to me that it is not consistent with the purpose of the 1971 Act set out in the Preamble. Furthermore, it seems to me that

it is not normal to assume that a pleasure boat will be 'kept' in such a thoroughfare at all."—*Ravenscroft v Canal And River Trust* [2017] EWHC 1874 (Ch).

MAINTAIN. "I accept Mr Coppel's submission that the Commission does not 'maintain' the Register by allowing non-compliant entries to remain on it. The maintenance of a register involves a continual process of securing that both new entries onto it and existing entries satisfy the requirements for being on the Register. The Commission maintains the Register by ensuring that each entry meets current, rather than historic, requirements."—*English Democrats Party, R (On the application of) v Electoral Commission* [2018] EWHC 251 (Admin).

MAINTENANCE. "In these circumstances, it seems to me that the appeal boils down to an argument as to whether it can properly be regarded either as 'maintenance' or as 'reasonable financial provision' under sections 1(1) and 1(2)(b) of the 1975 Act for an order to be made requiring the estate of the deceased to transfer the property to the applicant at full value. Mr Weatherill submitted that providing for Mr Warner to pay full value was not properly to be regarded as reasonable financial provision for maintenance.... If it is indeed maintenance to provide a house for an applicant in Mr Warner's position, why should the exact amount of the purchase price matter?"—*Lewis v Warner* [2017] EWCA Civ 2182.

MANDATORY. "In the past, Courts would ask themselves whether statutory requirements were 'mandatory' or 'directory'. Failure to comply with a requirement that was considered to be 'mandatory' would necessarily result in invalidity, while non-compliance with a 'directory' requirement need not do so. However, in *R v Soneji* [2006] 1 AC 340 Lord Steyn said (at paragraph 23) that 'the rigid mandatory and directory distinction, and its many artificial refinements, have outlived their usefulness'. Instead, he said, 'the emphasis ought to be on the consequences of non-compliance, and posing the question whether Parliament can fairly be taken to have intended total invalidity'."—*Haworth, R (On the Application Of) v Revenue And Customs* [2019] EWCA Civ 747.

MANIFESTLY WITHOUT REASONABLE FOUNDATION. "The expression 'manifestly without reasonable foundation' derives from decisions in *Strasbourg* where the European Court of Human Rights ('ECtHR') has considered that a wide margin of appreciation should be allowed to member states when it comes to general measures of political, economic or social strategy. In such an area the ECtHR has stated it will respect the member state's policy unless it is manifestly without reasonable foundation—as seen for example in respect of welfare benefits in Stec supra at [52]: 'A wide margin is usually allowed to the state under the Convention when it comes to general measures of economic or social strategy. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the court will generally respect the legislature's policy choice unless it is "manifestly" without reasonable foundation.'"—*Hunter v Student Awards Agency for Scotland* [2016] ScotCS CSOH 71.

MARRIAGE OF CONVENIENCE. See SHAM MARRIAGE.

MARSHALLING. "The principle of marshalling is an equitable principle. In its classic form it applies where two creditors are owed debts by the same debtor, one of whom can enforce his claim against more than one security but the other can resort to only one. In those circumstances the principle gives the second creditor a right in equity to require that the first creditor be treated as having satisfied himself as far as

possible out of the security to which the latter has no claim."—*McLean v Trustees of the Bankruptcy Estate of Dent* [2016] EWHC 2650 (Ch).

MAST. "Under Class A of Part 16, 'Communications', of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO') what is a 'mast' within paragraph A.1(2) – which excludes from the scope of permitted development certain forms of 'building based apparatus other than small antenna and small cell systems'? That is the main question in this appeal.... The appeal is on three grounds: first, that the judge's interpretation of the word 'mast' as defined in paragraph A.4 of Part 16 was 'too broad and is wrong in law'; second, that she was wrong to conclude that the council's decision was 'irrational'; and third, that she was wrong to find that each 'central support pole' was a 'mast'. The critical issue, however, is one of statutory construction: the correct interpretation of paragraph A.1(2)(c), which provides that the installation of a mast on a building less than 15 metres in height, when the mast would be within 20 metres of the highway, is not permitted development. Forsythia House is less than 15 metres in height and the apparatus is within 20 metres of the highway. The dispute, therefore, is whether the council misunderstood the relevant definition of a 'mast'. It is common ground that if the central support poles fall within that definition, an express grant of planning permission for their erection was necessary.... The meaning of the term 'mast' in paragraph A.1(2)(c) is a matter of law. Before a local planning authority can determine whether a particular structure is a 'mast', it must adopt the legally correct meaning. In this case, as Lang J. held, the council did not do that, and thus it erred in law. Its understanding of the provision was wrong. And the judge's, in my view, is right.... The place to start is the definition of a 'mast' in paragraph A.4. Three things may be said about that definition. First, it is plainly intended to apply generally to Class A – to each and all of the provisions in which the word 'mast' occurs. Secondly, it is in deliberately broad terms: a 'mast' in this legislative context simply means a 'radio mast' or a 'radio tower' – which implies some distinction between the two. And thirdly, in using the term 'radio mast' within the definition, the draughtsman clearly thought the word 'mast' had a well understood meaning, which required no explanation.... Among the definitions of a 'mast' in the Oxford English Dictionary is '[a] pole resembling the mast of a ship; e.g. the tall upright pole of a derrick or similar machine'. The corresponding definition in the Shorter Oxford English Dictionary is '2. A pole; a tall pole or other slender structure set upright for any purpose; esp ... (b) a post or latticework upright supporting a radio or television aerial'; in the online Oxford English Dictionary, '[an] upright pole or similar vertical structure resembling a ship's mast, esp. one supporting a flag, lightning conductor, broadcasting aerial, etc.; such a pole or structure forming part of a building, crane, etc. Also: a construction, often taking the form of a latticework tower or tripod, erected on a ship for various purposes, such as radio transmission, etc.'; and in the online Oxford Living Dictionaries, '[a] tall upright post on land, especially a flagpole or a television or radio transmitter'. Other dictionaries define the word in a similar way. For example, in the online Chambers Dictionary the relevant definition is 'any upright wooden or metal supporting pole, especially one carrying the sails of a ship, or a radio or television aerial', and in Chambers English Dictionary, 'any sturdy upright pole used as support'. And Collins Dictionary states that 'a radio mast is a tall upright structure that is used to transmit radio or television signals'. Mr Parkinson emphasized the evolution of the word's meaning to reflect changes in technology. He drew attention, for example, to

uses given in the Oxford English Dictionary: 'any structure used to raise and support the aerial wires' (1924), and '[a] spar for the support of an antenna' (1956). In the relevant sense of the word, the dictionary definitions converge. A 'mast' is an upright pole or lattice-work structure, whose function is to support an antenna or aerial. Some of the definitions refer to height, or tallness, as a characteristic of a 'mast'; others do not. But this is not an attribute common to all definitions, whereas uprightness, or verticality, clearly is. Tallness may be in the nature of a mast erected on the ground, but is not necessarily so for a mast mounted on a building. So, for example, the online Oxford Living Dictionaries refers to 'a tall upright post on land', while the online Oxford English Dictionary refers to 'an upright pole or similar vertical structure …, esp. such a pole or structure forming part of a building'… . Does this understanding of the word 'mast' fit with the evident meaning and purpose of the provisions for 'building-based apparatus' in paragraph A.1(2) in Class A of Part 16? In my opinion it does. It is consistent with the general definition of 'electronic communications apparatus' in paragraph 1(1)(d) of Schedule 2 to the 1984 Act, as including '… any … structure, pole or other thing in, on, by or from which any electronic communications apparatus is or may be installed, supported, carried or suspended …', and also therefore with the definition of 'electronic communications apparatus' in paragraph A.4. It also accords with the definition of a 'mast' as 'a radio mast or radio tower' in paragraph A.4. As the Secretary of State said in his written comments, the reason why the term is 'not defined more specifically' is 'to ensure that it covers structures that fulfil the function of supporting antennae to transmit and receive radio waves'. It has been held that a structure that contributes to the function of transmission or reception is properly to be considered part of the antenna, and is not a 'mast' (see the judgment of H.H.J. Gilbart Q.C., as he then was, sitting as a deputy judge of the High Court in *Airwave MMO2 Ltd. v First Secretary of State* [2005] EWHC 1701 (Admin), at paragraph 20). But I see no difficulty with the idea that paragraph A.1(2)(c) places outside the scope of 'permitted development' the installation of an upright pole or structure whose function is to support an antenna or aerial, when it is on a building less than 15 metres high, and when it would be within 20 metres of the highway. In my view this makes perfectly good sense. No specific dimensions of the apparatus itself are prescribed to bring it within the definition of a 'mast' in paragraph A.4 or the exclusion in paragraph A.1(2)(c). Paragraph A.1(2)(c) refers to the height of the building, but not to the height of the mast itself. Had it been thought necessary to specify the minimum height or any other dimension of the mast in that provision, this could and surely would have been done. It was done elsewhere in the definitions in paragraph A.4: for example, in the definitions of a 'small antenna' and 'small cell system'. And it was done, elaborately, throughout the provisions for 'Development not permitted' in paragraph A.1: for example, in paragraph A.1(1) and in paragraphs A.1(2)(a) and (b). But it seems implicit in the provisions of paragraph A.1 that for something to be a 'mast' as defined in paragraph A.4 it does not have to be of any minimum height in itself. As those provisions show, the height of a 'mast' can vary widely, according to its location and function. Whether 'ground-based' or 'building-based', if it is an upright pole or a lattice-work structure whose function is to support an antenna or aerial it will be a 'mast', and potentially within the ambit of paragraph A.1. To perform that function satisfactorily, for its particular purpose, it need only be as tall as it has to be in the place where it is erected. An upright pole supporting an antenna may therefore be a 'mast' even if it is relatively short – which is generally

more likely to be so if it is erected on the roof a building than if it is 'ground-based'. Whether it falls within any of the exclusions from the scope of permitted development in paragraph A.1 will depend on where it is, and may also depend on its height under a particular provision where that is specified. In the case of a mast installed on a building less than 15 metres high, and where it would be within 20 metres of the highway, its own height is not a consideration referred to in paragraph A.1(2)(c). Under that provision, read together with the definition of a 'mast' in paragraph A.4, the height of the apparatus itself is not a relevant factor. This avoids the potential inconsistency that would arise if, under paragraph A.1(2)(c), local planning authorities were expected to decide whether particular apparatus was or was not a mast on the basis of its height, but without any objective criterion to apply. The next question is whether there is anything in the legislative context to displace the ordinary meaning of the term 'mast' in paragraph A.1(2)(c). In my view there is not. I do not accept the submission that an upright pole whose function is to provide support for an antenna might not be a 'mast' within the definition in paragraph A.4 if it comes within a separate and undefined category – namely, an 'antenna support structure' or something of that kind. As Mr Parkinson pointed out, the term 'antenna support structures' is used only in paragraph A.1(1)(d)(ii), which concerns 'ground-based apparatus', in the expression 'any antenna support structures on the mast'. Paragraph A.1(4) refers to 'a mast or any other apparatus which includes or is intended for the support of an antenna'. Paragraph A.2(1)(a) refers to 'any antenna or supporting apparatus'. And paragraph A.5 refers to '(b) [a] mounting, fixing, bracket or other support structure'. The expression 'any support structures on the mast' in paragraph A.1(1)(d)(ii) seems to connote structures attached to an existing mast. I do not think it casts doubt on the concept of a 'mast' as an upright pole whose function is to provide support for an antenna. It is consistent with that concept. Nothing to suggest the contrary is to be found in other provisions of paragraph A.1. I agree with the judge's observation (in paragraph 34 of her judgment) that paragraph A.1(1)(a) 'does not provide any assistance in determining whether support poles are masts or not'. The references in that paragraph and in paragraph A.1(1)(b) to the installation, alteration or replacement of ground-based 'electronic communications apparatus (other than a mast)' in excess of the relevant specified height do not imply that a narrower or different meaning should be given to the concept of a 'mast' than the broad definition in paragraph A.4 allows. The definition of 'electronic communications apparatus' in paragraph 1(1) of Schedule 2 to the 1984 Act, and thus in paragraph A.4, is, I think, wide enough to include various forms of ground-based apparatus other than a 'mast', some of which will be more than 15 metres in height. Nor do I accept that a narrower interpretation of the term 'mast' is implied by the words 'an antenna, a mast or any other apparatus which includes or is intended for the support of an antenna' in paragraph A.1(4). Again, I agree with the judge. As she said (in paragraph 35), this provision 'refers to support apparatus which does not fall within the definition of [a] 'mast'. It does not narrow or modify the concept of a 'mast'. It brings within this exclusion from the scope of 'permitted development', where it applies, not only an 'antenna' and a 'mast' but also the wider concept of 'other apparatus which includes or is intended for the support of an antenna'. This could extend, for example, to apparatus attaching the antenna to the mast itself. I think the judge was right to endorse the Secretary of State's contention that this provision contains 'tight limitations' applying on article 2(3) land and sites of special scientific interest; that it was 'intended to have the same

effect as [paragraph] A.1(5)(a)(i) of the GPDO … before amendment …'; that '[most] structures which support [antennae] are masts, which are specifically listed in amended paragraph A.1(4)'; but that 'other apparatus such as brackets would also have fallen within the restriction and it was intended that the amendment provide the same level of protection'. A similar conclusion goes for paragraph A.2(1)(a). The effect of this provision is not to alter the definition of a 'mast' in paragraph A.4, but to apply the condition in question to various other apparatus, including 'supporting structures' that are not themselves a 'mast' within the definition. . . . Finally, I can see no justification for reading into the statutory definition of a 'mast' in paragraph A.4 of Class A the definitions of various apparatus – including 'Mast', 'Pole Mounts' and 'Stub Mast' – in the 'Glossary of Terms' at Appendix F to the 'Code of Best Practice on Mobile Network Development in England', published in 2016. As the Secretary of State said, the code also contains a general definition of a 'mast' (in a footnote on p.10) as '… a freestanding structure that supports antennas at a height where they can transmit and receive radio waves'; the glossary includes descriptions of 'structures typically used to support antennas, such as (Ground-based) Masts, Stub Masts and Pole Mounts'; and '[the] broad definition of 'mast' in the GPDO is intended to capture all such support structures [as are within the ambit of the general definition of a 'mast' in the code], whether building-based or ground-based'. It was submitted to the judge, in the light of evidence given on behalf of Cornerstone Telecommunications, that the definition of a 'mast' in paragraph A.4 means 'a tall, self-supporting structure that supports antennas at a height where they can satisfactorily send and receive radio waves and is capable of providing 360 degrees coverage from a single position' – which would exclude a 'pole mount' as defined in the code, but evidently not a 'stub mast' (paragraphs 37 and 38 of the judgment). The judge was right to reject that submission. I agree with her that to impose so restricted a meaning on the statutory definition of a 'mast' would, as she said, 'amount to an impermissible re-writing of the GPDO by the court' (paragraph 39). The code is industry guidance. The definitions it contains have no statutory provenance. As the judge saw, there is no reason to think that Class A of Part 16 was drafted on the basis that a 'mast' would be defined in accordance with definitions in its 'Glossary of Terms'. Nor does the code set out to amplify the definition in paragraph A.4 (paragraph 42). In short, there is no good argument for any different understanding of the term 'mast' in Class A of Part 16 from that adopted by the judge. A 'mast' in this legislative context is an upright pole or a lattice-work structure, whose function is to support an antenna or aerial. The definition in paragraph A.4 is not qualified either by the requirement that the mast be 'ground based' or that it be of any particular 'scale' or any particular 'design'. The judge's interpretation was not too broad. It was, in my view, correct. Thus the task of a local planning authority in determining whether a particular structure is a 'mast' within the reach of paragraph A.1(2)(c) is simply to ascertain whether, as a matter of fact and degree, it is an upright pole – or another structure to which the definition in paragraph A.4 applies – whose function is to support an antenna or aerial; whether the building is less than 15 metres in height; and whether the structure would be within 20 metres of the highway. This was not the approach adopted by the council when it determined that the apparatus installed on the plant room on the roof of Forsythia House did not comprise a 'mast' within the paragraph A.4 definition. The council's interpretation was, in my view, too narrow, and incorrect. This was an error of law, fatal to the council's decision. It was revealed in the letter of 9 June 2017 – where the council referred to the 'support poles'

as 'not ground based', and their 'scale and design' as 'not characteristic of a roof mast'."—*Mawbey, R (On the Application Of) & Orsv Cornerstone Telecommunications Infrastructure Ltd.* [2019] EWCA Civ 1016.

MASTERS. "Masters of the Queen's Bench Division are thus properly described nowadays as being 'judges attached to the Senior Courts, Queen's Bench Division' [10]. This echoes the notion of 'attachment' of the puisne judges who sit in the Queen's Bench Division but does not equate Masters with those judges: see SCA 1981 s.5.... For an exposition of the role of the modern Master, the wide scope of their trial jurisdiction [11] and the relationship of equality between judgments of puisne judges and Masters at first instance, see the decision of Chief Master Marsh in *Coral Reef Ltd v Silverbond Enterprises Ltd* [2016] EWHC 874 (Ch). Coral Reef was applied by me in *Paxton Jones v Chichester Harbour Conservancy* [2017] EWHC 2270 (QB) (and has been applied in other cases). See also *Kennedy v The National Trust for Scotland* [2017] EWHC 3368 (QB) per Sir David Eady."—*Abdule v The Foreign And Commonwealth Office* (national security – jurisdiction and status) [2018] EWHC 692 (QB).

MATRIMONIAL PROPERTY. "In this judgment, I use the words matrimonial and marital interchangeably. In *White v White* [2001] AC 596, Lord Nicholls used the expression, 'from a source wholly external to the marriage' (p. 994) when referring to non-matrimonial property. He defined matrimonial property in *Miller v Miller*; *McFarlane v McFarlane* [2006] 1 FLR 1186 (paragraph 22) as 'the financial product of the parties' common endeavour'. Lady Hale used the expression 'the fruits of the matrimonial partnership' in *Miller* (paragraph 141). In *Charman v Charman* (No 4) [2007] 1 FLR 1246 matrimonial property was described as 'the property of the parties generated during the marriage otherwise than by external donation' (paragraph 66). Non-matrimonial property can, therefore, be broadly defined in the negative, namely as being assets (or that part of the value of an asset) which are not the financial product of or generated by the parties' endeavours during the marriage. Examples usually given are assets owned by one spouse before the marriage and assets which have been inherited or otherwise given to a spouse from, typically, a relative of theirs during the marriage.... It is, perhaps, worth reflecting that the concept of property being either matrimonial or non-matrimonial property is a legal construct. Moreover, it is a construct which is not always capable of clear identification. An asset can, of course, be entirely the former, as in many cases, or entirely the latter, as in *K v L*. However, it is also worth repeating that an asset can be comprise both, in the sense that it can be partly the product, or reflective, of marital endeavour and partly the product, or reflective, of a source external to the marriage. I have added the word 'reflective' because 'reflect' was used by Lord Nicholls in *Miller* (paragraph 73) and 'reflective' was used by Wilson LJ in Jones (paragraph 33). When property is a combination, it can be artificial even to seek to identify a sharp division because the weight to be given to each type of contribution will not be susceptible of clear reflection in the asset's value. The exercise is more of an art than a science."—*Hart v Hart* [2017] EWCA Civ 1306.

MEETING. Stat. Def. ("including virtual meeting"), Housing Administration (England and Wales) Rules 2018 r.1.3.

MEMBER OF STAFF. Stat. Def., Data Protection (Charges and Information) Regulations 2018 reg.1.

MINISTER (PARISH). Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

MINISTER OF THE CROWN. Stat. Def., Data Protection Act 2018 s.205.

Stat. Def., "has the same meaning as in the Ministers of the Crown Act 1975 and also includes the Commissioners for Her Majesty's Revenue and Customs" (European Union (Withdrawal) Act 2018 s.20(1)).

MINOR. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

MISCARRIAGE OF JUSTICE. "18. The term 'miscarriage of justice' was not defined when section 133 was originally enacted. This resulted in a series of cases in which the courts sought to interpret the term, culminating in the decision of this court in Adams delivered on 11 May 2011. In that case, the court adopted four categories of case, of progressively wider scope, as a framework for discussion. They were: 1) cases where the fresh evidence shows clearly that the defendant is innocent of the crime of which he was convicted; 2) cases where the fresh evidence so undermines the evidence against the defendant that no conviction could possibly be based upon it; 3) cases where the fresh evidence renders the conviction unsafe in that, had it been available at the time of the trial, a reasonable jury might or might not have convicted the defendant; and 4) cases where something has gone seriously wrong in the investigation of the offence or the conduct of the trial, resulting in the conviction of someone who should not have been convicted. By a majority, the court held that the term 'miscarriage of justice' covered all cases falling within category (2). It therefore included, but was not limited to, cases falling within category (1). The minority view was that the term was confined to category (1) cases. 19. Section 133 was then amended, with effect from 13 March 2014, by section 175 of the 2014 Act, so as to confine the term 'miscarriage of justice' to category (1) cases. Section 133(1) remained unaltered: it continued to be necessary for the conviction to be reversed 'on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice'. However, section 175 of the 2014 Act inserted section 133(1ZA) into the 1988 Act, providing a statutory definition of the term 'miscarriage of justice': '(1ZA) For the purposes of subsection (1), there has been a miscarriage of justice in relation to a person convicted of a criminal offence in England and Wales or, in a case where subsection (6H) applies, Northern Ireland, if and only if the new or newly discovered fact shows beyond reasonable doubt that the person did not commit the offence (and references in the rest of this Part to a miscarriage of justice are to be construed accordingly).' The words 'did not commit the offence' can be read as synonymous in this context with the words 'is innocent' used by this court in category (1) in Adams. The effect of section 133(1ZA) is therefore that there is a miscarriage of justice, for the purposes of section 133(1), only where the new or newly discovered fact shows beyond reasonable doubt that the case falls into category (1) recognised in Adams."—*Hallam, R (on the application of) v Secretary of State for Justice* [2019] UKSC 2.

MISSING. Stat. Def. (in context of missing persons), Guardianship (Missing Persons) Act 2017 s.1.

MISSION MANAGEMENT FACILITY. Stat. Def., Space Industry Act 2018 s.19.

MISTAKE. "Once the registration requirements have been satisfied, the entry of a person in the Register as a proprietor of a legal estate is conclusive as to title: section

58(1) of the 2002 Act. The registered proprietor of an estate has the right to exercise the 'owner's powers' in relation to a registered estate. They include the power to charge the estate at law with the payment of money: see sections 23(1)(b) and 24 of the 2002 Act. The right to exercise owner's powers in relation to a registered estate or charge is taken to be free from any limitation affecting the validity of a disposition, so as to prevent the disponee's title being questioned but does not affect the lawfulness of a disposition: see section 26(1) and (3) of the 2002 Act. . . . There is no definition of 'mistake' for the purposes of the 2002 Act. However, the concepts of 'mistake' and an 'update' of the Register for the purposes of Schedule 4 para 2(1) have been considered recently by the Court of Appeal in *NRAM Ltd v Evans* [2018] 1 WLR 639 which was relied upon by the Judge both in relation to the distinction to be drawn between void and voidable transactions for the purposes of land registration and in relation to the time at which it must be determined whether a mistake has been made. . . . I have concluded that there was no 'mistake' for the purposes of Schedule 4 of the 2002 Act for a number of reasons, and that therefore the Judge was correct. Firstly, as Ms Yates on behalf of the Registrar pointed out, and Kitchin LJ recorded at [59] of his judgment in *NRAM v Evans*, it is important to bear in mind that the policy of the 2002 Act is that the Register should be a complete and accurate statement of the position in relation to title at any given time and that as a result of section 58 of the 2002 Act, subject to the powers of alteration in Schedule 4, the Register is conclusive as to legal title. Secondly, and by way of corollary, whether an entry in the Register is a 'mistake' must be judged at the time that the entry is made: see *NRAM v Evans* at [52]. As Kitchin LJ pointed out, '. . . if a change in the register is correct at the time it is made it is very hard to see how it can be called a mistake.' Were that not the case, the policy of the 2002 Act would be undermined. . . . Thirdly, schedule 4 paras 1 and 2(1) are concerned with the alteration of the Register involving the correction of a mistake. The mistake must be as to the state of the Register. The focus therefore, is upon the Register and not the underlying disposition in relation to the property. . . . It seems to me that the distinction made by the textbook writers and by Kitchin LJ between a void and a voidable transaction is made because a void disposition is one which, in law, never took place and therefore, should not be entered on the Register. This is consistent with the approach in *Argyle Building Society v Hammond* (1985) 49 P & CR 148 (CA) which was decided under the Land Registration Act 1925 and was a case in which there was a forged transfer. It was approved in the context of the 2002 Act by Kitchin LJ at [58] of his judgment. It is in this context that reference is made to the knowledge of the Registrar in an entirely abstract sense. Had the Registrar known that at common law the disposition did not take place at all, and accordingly there was no disposition for him to register, in his administrative capacity, he would not have done so. There was a mistake at the time of the registration because in law, there was no disposition to register. However, in the case of a voidable transaction, the disposition itself is valid until set aside. There is a disposition to register. This is consistent with the approach in *Norwich and Peterborough Building Society v Steed* (No 2) [1993] Ch 116 at 133-134 which was decided under the Land Registration Act 1925 but approved in the context of the 2002 Act in *NRAM v Evans*. In those circumstances, the Registrar makes no mistake when taking the appropriate administrative action when making the entry on the Register. The voidable transaction may subsequently be avoided but that does not render the entry in the Register a mistake retrospectively. The Registrar would still have taken the administrative act which he did at the time because he was faced with a

disposition which was valid at the time and which he was, subject to the relevant registration requirements being met, under a duty to register."—*Antoine v Barclays Bank UK Plc* [2018] EWCA Civ 2846.

MOBILE PHONE. "There is no reason of construction to attribute to the words mobile phone in the regulation a meaning other than the one in every day use. Mobile phone includes smartphone."—*Director of Public Prosecutions v Barreto* [2019] EWHC 2044 (Admin).

MOBILE REPEATER DEVICE. Stat. Def., Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2.

MODIFICATION. Stat. Def. ("modification" includes omission, addition or alteration), Smart Meters Act 2018 s.10.

MODIFY. "As appears from the authorities cited by the Lord Advocate, one enactment does not modify another merely because it makes additional provision in the same field of law. If it did, the important distinction between the protection of enactments from modification under Schedule 4 to the Scotland Act, and the inability of the Scottish Parliament to legislate in relation to reserved matters under Schedule 5, would become obscured. When the UK Parliament decides to reserve an entire area of the law to itself, it does so by listing the relevant subject-matter in Schedule 5. When it has not taken that step, but has protected a particular enactment from modification by including it in Schedule 4, it is not to be treated as if it had listed the subject-matter of the enactment in Schedule 5. Where the only relevant restriction on the legislative power of the Scottish Parliament is the protection of an enactment from modification under Schedule 4, the Parliament has the power to enact legislation relating to the same subject-matter as the protected enactment, provided it does not modify it. Without attempting an exhaustive definition, a protected enactment will be modified by a later enactment, even in the absence of express amendment or repeal, if it is implicitly amended, disapplied or repealed in whole or in part. That will be the position if the later enactment alters a rule laid down in the protected enactment, or is otherwise in conflict with its unqualified continuation in force as before, so that the protected enactment has to be understood as having been in substance amended, superseded, disapplied or repealed by the later one."—*The UK Withdrawal From The European Union (Legal Continuity) (Scotland)* [2018] UKSC 64.

Stat. Def., "includes amend, repeal or revoke (and related expressions are to be read accordingly)" (European Union (Withdrawal) Act 2018 s.20(1)); and note that, interestingly, "amend" is not defined so as to include "modify".

MONETARY AWARD. "So it is clear that in this context the reference to a 'sum awarded' is a reference to a monetary award. It is true that the subject matter of the present claim can be expressed in money terms. It is also true that one sum of £204,000 is much like another sum of £204,000. And it was in effect the sum in dispute in this case. But this was a claim, not that there was a relation of debtor and creditor for £204,000 between the claimants and the solicitors, but that there was one of trustee and beneficiary in respect of the solicitors' claim on their bank for £204,000. A statement that you own a particular credit is different from the statement that someone owes you a debt. If your debtor becomes bankrupt, you may not recover all you are due. If your trustee becomes bankrupt, the creditors will have no claim on trust assets. In some contexts, the word 'money' bears a narrow meaning, such as physical currency, banknotes and coins. In others it may be expanded beyond this to include, for example, debts owed by others. And there are rare cases where the meaning is

expanded further to include other rights as well, including personal property (see eg *Perrin v Morgan* [1943] AC 399, in the context of a will gift of 'moneys'). In my judgment, a decision that a particular asset (here an intangible credit in the conveyancing solicitors' client account) belongs beneficially to a particular claimant is not a 'monetary award'. It is instead a decision awarding the ownership of the asset to a particular person. Accordingly, in my judgment there is no justification in rule 36.17 for expanding the meaning of the phrase 'sum awarded' beyond the case of a money remedy awarded in a claim for debt or damages, to the case of the award of beneficial ownership of a debt owned by the defendant but owed to the defendant by a third party. The consequence would be that, if rule 36.17 had applied at all, paragraph (4)(a) would not apply at all, and the additional amount under paragraph (4)(d) would be calculated by reference to the costs awarded to the claimants."—*Knight & Anor v Knight (Costs)* [2019] EWHC 1545 (Ch).

MOTOR VEHICLE. Stat. Def. ("a mechanically propelled vehicle intended or adapted for use on roads"), Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2; Stat. Def. ("means a mechanically propelled vehicle intended or adapted for use on roads"), Civil Liability Act 2018 s.1.

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NATIONAL AMENITY SOCIETY. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

NAVIGABLE. See MAIN NAVIGABLE CHANNEL.

NE BIS IN IDEM. "A precise formulation of the actual ambit of the principle of ne bis in idem is elusive. Its general import is, however, clear enough. It is a reflection of the well understood rule against double jeopardy; and, in the context of its application to Member States under Article 54 of the Convention implementing the Schengen Agreement, is also a reflection of the prohibition of measures which might prejudice the hallowed principle of freedom of movement."—*A v Director of Public Prosecution* [2016] EWCA Crim 1393.

NECESSARY. "I agree with Mr Cragg that the approach adopted to 'necessary' in the statutory context with which Lord Griffiths was concerned is equally applicable to 'necessary' as found in Regulation 12 of the Complaints and Misconduct Regulations. It has a high threshold, in the sense that it means more than 'useful' or 'expedient'."—*Miah, R. (on the application of) v Independent Police Complaints Commission* [2016] EWHC 3310 (Admin).

"However, it should be emphasised that the underlying concept in section 24(5) is that of necessity. This cannot be envisaged as a synonym for 'desirable' or 'convenient'. For present purposes the issue may be formulated thus: should this Court, in the exercise of its review function, conclude that an arrest was necessary to allow the prompt and effective investigation of this complaint?"—*R. (on the application of TL) v Surrey Police* [2017] EWHC 129 (Admin).

"'Necessary' is a normal English word and no gloss of it is required but the court must keep in mind that the test is one of necessity and not, for example, one of convenience or desirability."—*Birdi v Price* [2018] EWHC 2943 (Ch).

"The test of necessity is more than simply 'desirable' or 'convenient' or 'reasonable'. It is a high bar, . . ."—*The Commissioner of Police for the Metropolis v MR* [2019] EWHC 888 (QB).

NET HEAT INPUT. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

NET SALES INCOME. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

NETWORK AND INFORMATION SERVICE. Stat. Def., Network and Information Systems Regulations 2018 reg.1.

NHS CHEMIST. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

NIGHT WORK. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

NITROGEN OXIDES. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

NON-GB COMPANY. Stat. Def. ("a company incorporated outside Great Britain"), Smart Meters Act 2018 s.10.

NON-PROPRIETARY NAME. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

NON-TRIVIAL. "I am not troubled by the use of the words 'non-trivial' in paragraph 12(1)(f) because it is clear that the meaning of 'non-trivial' is not confined to that which is only just not trivial. As I said in argument, it can also mean 'significant', which is the meaning to be preferred because it chimes with the meaning of 'misconduct' in the Accountancy Scheme. Accordingly I reject Mr Drabble's submission that paragraph 12(1)(f) is to be given a meaning of anything but trivial, i.e. as including the not quite trivial. Such a meaning would be out of context and therefore inconsistent with the principles of interpretation which courts apply. The word 'non-trivial' must be given a contextual meaning consistent with the term 'misconduct' which sub-paragraph (f) explicates." *Baker Tilly UK Audit LLP v Financial Reporting Council* [2017] EWCA Civ 406.

NORTHERN IRELAND DEVOLVED AUTHORITY. Stat. Def., "the First Minister and deputy First Minister in Northern Ireland acting jointly, a Northern Ireland Minister or a Northern Ireland department" (European Union (Withdrawal) Act 2018 s.20(1)).

NOT ADMITTED. "Although the rule does not use the language of 'non-admission', it is I think still common practice in a professionally drawn defence for the pleader to state that a particular allegation in the particulars of claim is 'not admitted', when the intention is to say that the allegation falls within paragraph (1)(b) as one which the defendant is unable to admit or deny, but which he requires the claimant to prove. So used, the expression is a convenient form of shorthand, provided that the requirements of the sub-paragraph are not thereby overlooked or watered down. Under the CPR, unlike the previous Rules of the Supreme Court ('RSC'), a non-admission may only properly be pleaded by a defendant where he is, in fact, unable to admit or deny the allegation in question, and therefore requires the claimant to prove it."—*SPI North Ltd v Swiss Post International (UK) Ltd* [2019] EWCA Civ 7.

NOTHING ELSE WILL DO. "Since the phrase 'nothing else will do' was first coined in the context of public law orders for the protection of children by the Supreme Court in *Re B*, judges in both the High Court and Court of Appeal have cautioned professionals and courts to ensure that the phrase is applied so that it is tied to the welfare of the child as described by Baroness Hale in paragraph 215 of her judgment:

'We all agree that an order compulsorily severing the ties between a child and her parents can only be made if "justified by an overriding requirement pertaining to the child's best interests". In other words, the test is one of necessity. Nothing else will do.'

The phrase is meaningless, and potentially dangerous, if it is applied as some freestanding, shortcut test divorced from, or even in place of, an overall evaluation of the child's welfare. Used properly, as Baroness Hale explained, the phrase 'nothing else will do' is no more, nor no less, than a useful distillation of the proportionality and necessity test as embodied in the ECHR and reflected in the need to afford paramount consideration to the welfare of the child throughout her lifetime (ACA 2002 s.1). The phrase 'nothing else will do' is not some sort of hyperlink providing a direct route to the outcome of a case so as to bypass the need to undertake a full, comprehensive

welfare evaluation of all of the relevant pros and cons (see *Re B-S* [2013] EWCA Civ 1146, *Re R* [2014] EWCA Civ 715 and other cases).

69. Once the comprehensive, full welfare analysis has been undertaken of the pros and cons it is then, and only then, that the overall proportionality of any plan for adoption falls to be evaluated and the phrase 'nothing else will do' can properly be deployed. If the ultimate outcome of the case is to favour placement for adoption or the making of an adoption order it is that outcome that falls to be evaluated against the yardstick of necessity, proportionality and 'nothing else will do'."—*W (A Child), Re* [2016] EWCA Civ 793.

NOTICE. "For the billing authority merely to leave the notice with a third party, not authorised to accept service of the notice on the owner's behalf, or, indeed, to effect service on the authority's behalf, in the hope, or with the intention, that the notice will somehow be brought to the attention of the owner, and where a copy of the notice or its contents are in fact subsequently communicated to the owner by the third party, does not, on any natural or normal usage of the words 'serve' and 'on', constitute 'service' on 'the owner' 'by the authority'."—*UKI (Kingsway) Ltd v Westminster City Council* [2017] EWCA Civ 430.

NOXIOUS. "Mr Rule pointed to the etymology of the word 'noxious', which has its root in a Latin word meaning hurt, damage or harm, and to the context in which the word appears in section 24 of the 1861 Act, namely 'any poison or other destructive or noxious thing'. He drew a distinction between disgust on the one hand, and actual harm on the other hand. He referred to other, more recent, statutory provisions referring to noxious things, such as section 2 of the Wild Mammals Act 1996, section 113 of the Anti-Terrorism, Crime and Security Act 2001 and section 6 of the Terrorism Act 2006, all of which he submitted show a consistent use of the word 'noxious' as requiring a capacity for the substance concerned to cause harm. He noted that 'potting' incidents have in the past been dealt with, if subject to prosecution at all, as offences of common assault or battery. He submitted that to interpret 'noxious thing' as including substances which are not harmful would have very wide implications for many other situations: for example, the wider interpretation for which the prosecution contend would make it possible to charge spitting as a section 24 offence. . . . In our judgment, where an issue arises as to whether a substance is a noxious thing for the purpose of section 24 of the 1861 Act, it will be for the judge to rule as a matter of law whether the substance concerned, in the quantity and manner in which it is shown by the evidence to have been administered, could properly be found by the jury to be injurious, hurtful, harmful or unwholesome. If it can be properly so regarded, it will be a matter for the jury whether they are satisfied that it was a noxious thing within that definition. In the present case, the judges below were entitled to find that a cupful of human urine, from an unknown source, thrown at the face of a victim is capable of being regarded as an unwholesome, and therefore a noxious, thing. It follows that they were correct to dismiss the applications made, and that the jury were entitled to conclude that Veysey had on three occasions administered a noxious thing to prison officers."—*Veysey v R.* [2019] EWCA Crim 1332.

NUCLEAR SAFEGUARDS PURPOSES. Stat. Def., Energy Act 2013 s.72 inserted by Nuclear Safeguards Act 2018 s.1.

NURSERY. See SCHOOL.

O

OCCUPATION. See ACTUAL OCCUPATION.

OFF THE RECORD. "'Off the record' is an idiom and like many idioms can bear different shades of meaning. It may, for example, be intended to mean 'strictly confidential' or it may be intended to mean 'not to be directly quoted or attributed'. The judge found that Mr Hartnett understood it to mean that the interview was to be a 'background briefing', intended to influence the journalists' views and what they wrote about matters affecting HMRC but not to be published. There has been no appeal against that finding, but nothing in my view turns on what precisely Mr Hartnett intended."—*Ingenious Media Holdings Plc & R. (on the application of) v Revenue and Customs* [2016] UKSC 54.

OFFAL. Stat. Def. (by reference to point 1.11 of Annex 1 to Regulation (EC) No. 853/2004), Transmissible Spongiform Encephalopathies (England) Regulations 2018 reg.2.

OFFICIAL. Stat. Def., Public Regulated Service (Galileo) Regulations 2018 reg.2.

ON-CALL. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

ONLINE MARKETPLACE. Stat. Def., Network and Information Systems Regulations 2018 reg.1.

ONLINE SEARCH ENGINE. Stat. Def. ("a digital service that allows users to perform searches of, in principle, all websites or websites in a particular language on the basis of a query on any subject in the form of a keyword, phrase or other input, and returns links in which information related to the requested content can be found"), Network and Information Systems Regulations 2018 reg.1.

OPERATES. "'Operate', for the purposes of section 55, has been considered by this court in a series of cases, including *Britain v ABC Cabs* [1981] RTR 395, *Windsor and Maidenhead Royal Borough Council v Khan* [1994] RTR 87, *Adur District Council v Fry* [1997] RTR 257 and *Bromsgrove District Council v Powers* (Unreported) (16 July 1998). These firmly establish that, in this context, 'operate' does not have its common meaning. Rather, it is a term of art defined strictly by section 80(1) as meaning 'in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle'. Therefore, as Dyson J said in *Powers*: '... [T]he definition of the word "operate" focuses on the arrangements pursuant to which a private hire vehicle is provided and not the provision of the vehicle itself.... [T]he word "operate" is not to be equated with, or taken as including, the providing of the vehicle, but refers to the antecedent arrangements.'"—*Milton Keynes Council v Skyline Taxis and Private Hire Ltd* [2017] EWHC 2794 (Admin).

OPERATIONAL. "I am satisfied that, on an ordinary construction of the contract, by engaging to supply a 'fully operational cofferdam' the pursuer did not undertake that it could be used in all weather conditions however severe. The defender's suggested construction is not the natural and ordinary meaning of the words used. In my opinion it also defies common sense. It was obvious that construction work at sea

would be likely to be unsafe in some severe weather conditions."—*Acotec UK Ltd v McLaughlin & Harvey Ltd* [2016] ScotCS CSOH 134.

OPPRESSIVE. "The meaning of the words 'unjust' and 'oppressive' were considered by Lord Diplock in relation to the very similar provision in s.8(3) of the Fugitive Offenders Act 1967 in *Kakis* at 782: '"Unjust" I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, "oppressive" as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into account; but there is room for overlapping and between them they would cover all cases where to return him would not be fair'."—*Pillar-Neumann v Public Prosecutor's Office of Klagenfurt* [2017] EWHC 3371 (Admin).

ORDINARY RESIDENCE. The Home Office issued Nationality policy: assessing ordinary residence Version 2.0 on 25 October 2017 telling caseworkers and examiners how to consider whether an individual is ordinarily resident in the UK—see *https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655489/Nationality-policy-assessing-ordinary-residence-v2.0EXT.pdf.*

"Guidance on the meaning of 'ordinarily resident' can be found in three decisions of the House of Lords: *Levene v Inland Revenue Commissioners* [1928] AC 217, *Inland Revenue Commissioners v Lysaght* [1928] AC 234 and *R (Shah) v Barnet LBC* [1983] 2 AC 309. Those cases provide authority for the following propositions:

i) 'The expression "ordinary residence" connotes residence in a place with some degree of continuity and apart from accidental or temporary absences' (*Levene*, at 225, per Viscount Cave LC);

ii) '[T]he converse to "ordinarily" is "extraordinarily" and … part of the regular order of a man's life, adopted voluntarily and for settled purposes, is not "extraordinary" (*Lysaght*, at 243, per Viscount Sumner). Consistently with this, "ordinarily resident" refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration' (*Shah*, at 343, per Lord Scarman);

iii) '"Ordinary residence" differs little from "residence" (*Levene*, at 222, per Viscount Cave LC). "Ordinarily resident" means 'no more than that the residence is not casual and uncertain but that the person held to reside does so in the ordinary course of his life' (*Lysaght*, at 248, per Lord Buckmaster);

iv) A person can be resident in a place even though 'from time to time he leaves it for the purpose of business or pleasure' and, conversely, 'a person who has his home abroad and visits the United Kingdom from time to time for temporary purposes without setting up an establishment in this country is not considered to be resident here' (*Levene*, at 222-223, per Viscount Cave LC);

v) A person can also be resident in a place even though he would prefer to be elsewhere. In *Lysaght*, Lord Buckmaster said (at 248):

'A man might well be compelled to reside here completely against his will; the exigencies of business often forbid the choice of residence, and though a man may make his home elsewhere and stay in this country only because business compels him, yet none the less, if the periods for which and the conditions under which he stays are such that they may be regarded as constituting residence, as in my opinion they were in this case, it is open to the Commissioners to find that in fact he does so reside';

vi) A person may reside in more than one place (*Levene*, at 223, per Viscount Cave LC);

vii) 'Ordinary residence' is not synonymous with 'domicile' or 'permanent home' (*Shah*, at 342-343 and 345, per Lord Scarman);

viii) 'Immigration status' 'may or may not be a guide to a person's intention in establishing a residence in this country' (*Shah*, 348, per Lord Scarman); and

ix) 'There are two, and no more than two, respects in which the mind of the "propositus" is important in determining ordinary residence': '[t]he residence must be voluntarily adopted' and 'there must be a degree of settled purpose', which could potentially be 'a specific limited purpose' (*Shah*, at 344 and 348, per Lord Scarman). Lord Scarman explained in *Shah* (at 344):

"The purpose may be one; or there may be several. It may be specific or general. All that the law requires is that there is a settled purpose. This is not to say that the 'propositus' intends to stay where he is indefinitely; indeed his purpose, while settled, may be for a limited period. Education, business or profession, employment, health, family, or merely love of the place spring to mind as common reasons for a choice of regular abode. and there may well be many others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled."—*Arthur v Revenue And Customs* [2017] EWCA Civ 1756.

"The heart of the issue in this aspect of the case is whether occupation of a hotel by BU and her children would be occupation 'as their only or main residence'. Mr Carter submits that the phrase 'as their only or main residence', which is not defined in the Immigration Act, should be construed consistently with the same or similar phrases used in the Leasehold Reform Act 1967, Rent Act 1977 and Housing Act 1988. In *Crawley Borough Council v Sawyer* (1988) HLR 98, the Court of Appeal said there was no material difference between occupying premises as a home and occupying them as a residence. Occupation as a home or residence requires 'a substantial degree of personal occupation by the tenant of an essentially residential nature': *Herbert v Byrne* [1964] 1 WLR 519 at 528. In a similar vein, in *Swanbrae Ltd v Elliott* (1986) 19 HLR 86 Swinton Thomas J said that 'residing with' means more than 'living at' and 'mean something more than dwell transiently and to my mind they have the connotation of having a settled home'. The question is one of fact and degree. In *Freeman v Islington LBC* [2010) HLR 6 at Jacobs LJ said at [22]: 'mere "temporary residence" is not enough. One is looking for something which can fairly be called "homemaking".'"

Mr Carter submits that staying in a hotel, as a temporary expedient to avoid homelessness, would not amount to occupation of premises for residential use.

I accept that occupation of hotel accommodation may not be residential but whether it is in any particular case will be dependent on all the circumstances. Relevant considerations may include the intention of the occupier, the length of occupation, the actual living arrangements and what alternatives there are.

In understanding what is meant by the statutory terms, I may properly have regard to the Explanatory Notes to the Act: see *Wilson v First County Trust (No.2)* [2003] [UKHL] 40; [2004] 1 AC 816 at [64]; *Hillingdon LBC v Secretary of State for Transport* [2017] EWHC 121 (Admin). Paragraph 108 of the Explanatory Notes to the Immigration Act explain that 'for example, holiday accommodation will not ordinarily be captured, as for most people it will not provide their only or main home, but if somebody chooses to live in a hotel, the arrangements for that person will be

captured.' This illustrates the fact-sensitive judgment that must be made in each case and that short term accommodation which is not generally provided as a home could be caught. If occupation of holiday accommodation can be for residential use, so can occupation of a hotel. It all depends on the circumstances. The Explanatory Note provides reassurance that my construction of the provisions is consistent with the legislative intention."—*U and U, R (on the application of) v Milton Keynes Council* [2017] EWHC 3050 (Admin).

ORIGINAL BIOMETHANE. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

OTHERWISE. "The word otherwise is defined in the Oxford English dictionary as 'in circumstances different from those present or considered'. The words or otherwise therefore distinguish the circumstances in question from the categories that precede them. The words have a specific purpose, leaving open the possibility of other sets of circumstances or conditions that could feature as the background to the central operative requirement that the individual's ability to protect him or herself from violence, abuse or neglect is significantly impaired. They provide for an additional third category or categories of potentially vulnerable adults who are not suffering from an illness, disability or old age. The linkage between the categories specified and the alternative category is that the adult's ability to protect himself must be impaired.

We reject the submission that the words or otherwise should be construed ejusdem generis so that or otherwise becomes a reason similar to those listed. Section 5(6) does not justify such an interpretation. It does not for instance say 'some other similar reason' or 'some like reason' or 'some equivalent reason' or 'a reason of a similar type'. If Parliament had wished to link 'other reason' to the identified categories, then it could easily have chosen any of these drafting techniques. It did not do so."—*Uddin, R v* [2017] EWCA 1072 (Crim).

OUTPUT WORK. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

OUTSTANDING. "Outstanding is an ordinary English word with a readily understood meaning and was doubtless chosen by Parliament to identify the exceptional nature of the benefit that must exist. It may be useful for this purpose to consider whether the benefit to the employer exceeded what would normally be expected to result from the work for which the employee was paid so long as one bears in mind that the focus of s.40(1) is on the benefit to the employer and not on the degree of inventiveness of the employee.... What I think this demonstrates is that 'outstanding' is a relative concept which requires to be measured against the relevant factors in each case. In relation to a large conglomerate like the Unilever Group, turnover and profitability will be relevant factors to consider as in every other case but they will not be the only relevant factors as s.40(1) makes clear."—*Shanks v Unilever Plc* [2017] EWCA Civ 2.

OVERSEAS PRODUCTION ORDER. Stat. Def., Crime (Overseas Production Orders) Act 2019 ss.1(4), 7(6).

OVERTIME. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

P

PACKAGE TRAVEL CONTRACT. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

PACKETS. "By the priority date mobile networks were digital. At least some types of information sent via the networks were in 'packets'—that is groups of bits. In general a packet may comprise payload data (that is content which the transmitting entity is to send to a receiving entity) and control data (that is data which enables the transmitting entity, receiving entity and mobile network to operate efficiently and process the packets). The control data is usually included in a packet as a header."—*Unwired Planet International Ltd v Huawei Technologies Co Ltd* [2017] EWCA Civ 266.

PARISH. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.55.

PAROCHIAL LIBRARY. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.95.

PARKING CHARGE. Stat. Def., Parking (Code of Practice) Act 2019 s.10(2).

PARKING CODE. Stat. Def., Parking (Code of Practice) Act 2019 s.1.

PARTNERSHIP. "In its legal meaning partnership is 'the relation which subsists between persons carrying on a business in common with a view to profit': see section 1(1) of the Partnership Act 1890. Other general characteristics of a partnership are: (i) mutual agency whereby each partner has authority to represent and bind the other(s), and (ii) joint liability for the debts and obligations of the partnership business."—*Sheikh Tahnoon Bin Saeed Bin Shakhboot Al Nehayan v Kent (aka John Kent)* [2018] EWHC 333 (Comm).

PATENT PROTECTION PERIOD. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

PENALTY. "The Court has repeatedly held that the refusal to allow a credit does not of itself amount to the imposition of a penalty by the tax authority. The CJEU held in Emsland-Stärke that there needs to be a clear and unambiguous basis for imposing a penalty in addition to disallowing the benefit fraudulently claimed. Section 60 provides that clear and unambiguous basis in Mr Butt's case so the court is not having to devise a criminal offence in order to give effect to the wording of a directive. Section 60 provides expressly for the imposition of a penalty where a person dishonestly does an act for the purpose of evading VAT, in Waterfire's case that act being to claim a VAT credit in circumstances where it was not entitled to that credit. The Halifax/Kittel principle means that the circumstances in which Waterfire is not entitled to claim the VAT credit include circumstances where Waterfire knew that the transactions purporting to give rise to the credit were part of an MTIC fraud. The situation here is different from that in Criminal Proceedings against X where the national legislation was expressly limited to the import and export of the goods or from that in Procura della Repubblica where the definition of 'worker' in the domestic

legislation was narrower than that in the relevant directive. Here there is nothing in section 60 which expressly limits the circumstances in which the penalty can be imposed to cases where, for example, the transactions were entirely fictitious."—*Butt v Revenue And Customs* [2019] EWCA Civ 554.

PERSISTENT OFFENDER. "The appeal concerns (i) whether TB is a 'foreign criminal' as defined in s.117D(2) Nationality, Immigration and Asylum Act 2002 ('NIAA'); (ii) if so, whether Exception 1 in s.117C(4) NIAA applies and (iii) if not, whether the 'very compelling circumstances' test is met. . . . In my judgment the UTJ was entitled to conclude that the FJT had made a material error of law in his approach to the issue of whether TB was a persistent offender. In particular: (1) It is apparent that the FTJ relied on the use of the present tense in the statute: 'is' a persistent offender. This led him to focus unduly on the current position rather than the overall picture. As Chege and SC (Zimbabwe) make clear, a persistent offender is someone who 'keeps on breaking the law'. An individual may be so regarded even though 'he may not have offended for some time'. In Chege, for example, he was regarded as being a persistent offender, even though he had committed no further offences for two years following release from immigration detention. (2) The FTJ's erroneous approach is borne out by the fact that he was prepared to regard TB as no longer a persistent offender at the time of the SSHD decision, which was only 7 months after he had been released from prison. (3) Whilst rehabilitation is a relevant consideration, it is to be noted that Chege at [60] refers to 'an established period of rehabilitation' and keeping out of trouble 'for a significant period of time' which 'may' lead to the conclusion that the individual is no longer a persistent offender. In any event, the findings made by the FTJ on rehabilitation were not referred to in relation to his conclusion on this issue. That conclusion was expressly based on 'the fact that he has committed no offences since October 2013'. (4) The FTJ was wrong to focus on TB's lack of offending from October 2013. TB was in prison until February 2015 and so any absence in offending in the intervening period could not be said to lead to the conclusion that TB was no longer a persistent offender. (5) Once TB left prison he would have been on licence for a period of months and throughout was under the threat of deportation. As pointed out in Chege at [59], whilst there is a strong incentive not to commit further offences lack of offending may be of little significance 'in deciding whether, looking at his history as a whole, he fits the description'. Again, this was not a factor taken into account by the FTJ. (6) In considering the overall picture the FTJ ought to have had regard to the fact that TB had resumed offending in 2013-2014, notwithstanding a significant gap since his prior offending in 2004-2009. In all the circumstances I consider that the UT was entitled to conclude that the FTJ had made a material error of law and to remake that decision. The UT's assessment that TB was a persistent offender involves no error of law or perversity. TB is accordingly a foreign criminal as a persistent offender under s.117D(2)(c)(iii). In those circumstances it is not necessary to address Issue (2) – whether he is also a foreign criminal because he has been convicted of an offence causing serious harm under s.117D(2)(c)(ii)."—*Binbuga (Turkey) v Secretary of State for the Home Department* [2019] EWCA Civ 551.

PERSISTENTLY. "The meaning of the word 'persistently', as used in paragraph 3.1 of Practice Direction 3C, was considered by Mr Edward Bartley Jones QC, sitting as a Deputy High Court Judge, in *Courtman v Ludlam* [2009] EWHC 2067 (Ch). He concluded that 'persistence' requires at least three wholly unmeritorious applications.... It seems to me, however, that Mr Bartley Jones was right to take the view that

an ECRO cannot be made unless there have, overall, been at least three totally without merit claims or applications. Had it been intended that an ECRO should be possible where there had been no more than two unmeritorious claims or applications, provided that they had been spread across more than one set of proceedings, the draftsman could have said so in terms. The Practice Direction is not so framed, but instead uses the word 'persistently'. Mr Boardman is in effect submitting that a person can be said to have issued claims or applications 'persistently' if he has made just one application in each of two sets of proceedings. In my view, however, such a person would not naturally be described as issuing claims or applications 'persistently', and the point is reinforced by the contrast with the '2 or more' found in paragraph 2.1 of the Practice Direction."—*CFC 26 Ltd v Brown Shipley & Co Ltd* [2017] EWHC 1594 (Ch).

PERSON. "Ms Hewitt sought to resist that clear conclusion. She submitted that the Coroner is not a 'person' for the purposes of Regulation 18(1) of the 1996 Regulations. I do not accept that submission. In my view, the natural meaning of the word 'person' includes the Coroner. In an appropriate context, that word can include a judge or other judicial office holder. For example, in the context of divorce proceedings, it was held that the words 'any person', in section 10 of the Matrimonial Causes Act 1950, 'clearly include the trial judge': see *Middlebrook v Middlebrook* [1964] P 262, at 264 (Wrangham J). I see no reason to take a different view in the case of a coroner."—*Secretary of State, R. (on the application of) v HM Senior Coroner for Norfolk* [2016] EWHC 2279 (Admin).

"By s.5 and Schedule 1 of the Interpretation Act 1978, 'person' includes 'a body of persons corporate or unincorporated', and so a local authority."—*R. v AB* [2017] EWCA Crim 534.

PERSON WITH SIGNIFICANT CONTROL. An individual X has significant control of a company Y if they meet one of the following conditions: X holds more than 25% of the shares in company Y; X holds more than 25% of voting rights in company Y; X holds the right to appoint or remove a majority of the board of directors of company Y; X has the right to exercise, or actually exercises, significant influence or control over company Y; or X has the right to exercise, or actually exercises, significant influence or control over a trust or firm that is not itself a legal person, but whose trustees or members meet any of the above conditions (or would if they were individuals) (Pt 1 of Sch.1A to the Companies Act 2006; Pts 2 and 3 clarify what it means to hold an interest in a company and the rules for interpreting the Schedule, including how to calculate shareholdings and what is meant by "voting rights"). Companies must keep a register, known as the PSC register, of persons with significant control (q.v.) over the company, unless they are expressly exempted from the requirement by regulations or they are issuers to which Chapter 5 of the FCA's Disclosure Rules and Transparency Rules sourcebook applies (see ss.790B, 790C and 790M of the Companies Act 2006, in the Part 21A inserted by the Small Business, Enterprise and Employment Act 2015 s.81 and Sch.3).

PERSONAL DATA. Stat. Def., Data Protection Act 2018 s.3.

PERSONAL DATA BREACH. Stat. Def., Data Protection Act 2018 ss.33, 84.

PERSONAL RECORD. Stat. Def., Crime (Overseas Production Orders) Act 2019 s.3.

PET. Stat. Def. ("an animal mainly or permanently, or intended to be mainly or permanently, kept by a person for— (a) personal interest, (b) companionship, (c)

ornamental purposes, or (d) any combination of (a) to (c)"), Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2.

PHOTOGRAPH. Stat. Def. ("includes any process by means of which an image may be produced"), Stalking Protection Act 2019 s.14.

PLATFORM TICKET. Stat. Def., Railways (Penalty Fares) Regulations 2018 reg.3.

PLATINUM SALT SENSITISATION. "Platinum salt sensitisation is, in itself, an asymptomatic condition. However, further exposure to chlorinated platinum salts is likely to cause someone with platinum salt sensitisation to develop an allergic reaction involving physical symptoms such as running eyes or nose, skin irritation, and bronchial problems."—*Dryden v Johnson Matthey PLC* [2018] UKSC 18.

PLAUSIBILITY. "Plausibility is not a term of art, and its content is inevitably influenced by the legal context. In the present context, the following points should be made. First, the proposition that a product is efficacious for the treatment of a given condition must be plausible. Second, it is not made plausible by a bare assertion to that effect, and the disclosure of a mere possibility that it will work is no better than a bare assertion. As Lord Hoffmann observed in *Conor Medsystems Inc v Angiotech Pharmaceuticals Inc* [2008] RPC 28, para 28, 'it is hard to see how the notion that something is worth trying or might have some effect can be described as an invention in respect of which anyone would be entitled to a monopoly'. But, third, the claimed therapeutic effect may well be rendered plausible by a specification showing that something was worth trying for a reason, ie not just because there was an abstract possibility that it would work but because reasonable scientific grounds were disclosed for expecting that it might well work. The disclosure of those grounds marks the difference between a speculation and a contribution to the art. This is in substance what the Technical Board of Appeal has held in the context of article 56, when addressing the sufficiency of disclosure made in support of claims extending beyond the teaching of the patent. In my opinion, there is no reason to apply a lower standard of plausibility when the sufficiency of disclosure arises in the context of EPC articles 83 and 84 and their analogues in section 14 of the Patents Act. In both contexts, the test has the same purpose. Fourth, although the disclosure need not definitively prove the assertion that the product works for the designated purpose, there must be something that would cause the skilled person to think that there was a reasonable prospect that the assertion would prove to be true. Fifth, that reasonable prospect must be based on what the TBA in SALK (para 9) called 'a direct effect on a metabolic mechanism specifically involved in the disease, this mechanism being either known from the prior art or demonstrated in the patent per se.' Sixth, in SALK , this point was made in the context of experimental data. But the effect on the disease process need not necessarily be demonstrated by experimental data. It can be demonstrated by a priori reasoning. For example, and it is no more than an example, the specification may point to some property of the product which would lead the skilled person to expect that it might well produce the claimed therapeutic effect; or to some unifying principle that relates the product or the proposed use to something else which would suggest as much to the skilled person. Seventh, sufficiency is a characteristic of the disclosure, and these matters must appear from the patent. The disclosure may be supplemented or explained by the common general knowledge of the skilled person. But it is not enough that the patentee can prove that the product can reasonably be

expected to work in the designated use, if the skilled person would not derive this from the teaching of the patent."—*Warner-Lambert Company LLC v Generics (UK) Ltd (t/a Mylan)* [2018] UKSC 56.

POCKETKNIFE. "Section 139(1) defines the offence by reference to possession of 'an article' in a public place. Subsection (2) provides that an article to which subsection (1) applies is one which has a blade or is sharply pointed, unless it is a folding pocketknife. Subsection (3) qualifies the folding pocketknife exception. It is not to be regarded as a folding pocketknife for this purpose if the blade exceeds three inches. The cases to which we have referred were cases where the article in question was argued to be a pocketknife within the exception of subsection (2) as qualified by subsection (3). It was common ground in each case that the article fell within the definition of pocketknife. However, the issue here is whether the article can properly be regarded as a pocketknife. In our view it plainly cannot. A pocketknife is not an apt description of a cut-throat razor. The items have distinct characteristics, as reflected both in their descriptive names and in their functions. A razor is an article of sufficient sharpness to be used to shave. That would not be normally done by a pocketknife."—*D, R v* [2019] EWCA Crim 45.

POINT OF SALE. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

POINTE GOURDE RULE. "The appeal raises questions concerning the so-called Pointe Gourde rule (*Pointe Gourde Quarrying & Transport Co Ltd v Sub-Intendent of Crown Lands* [1947] AC 565), or 'no-scheme' rule: that is, the rule that compensation for compulsory acquisition is to be assessed disregarding any increase or decrease in value solely attributable to the underlying scheme of the acquiring authority. The law is to be found in the Land Compensation Act 1961 as explained and expanded by judicial interpretation. The particular issue concerns the relationship between the general provisions for the disregard of the scheme, and the more specific provisions relating to planning assumptions. 9. The rule has given rise to substantial controversy and difficulty in practice. In *Waters v Welsh Development Agency* [2004] 1 WLR 1304; [2004] UKHL 19, para 2 ('*Waters*'), Lord Nicholls of Birkenhead spoke of the law as 'fraught with complexity and obscurity'. In a report in 2003 the Law Commission conducted a detailed review of the history of the rule and the relevant jurisprudence, and made recommendations for the replacement of the existing rules by a comprehensive statutory code (Towards a Compulsory Purchase Code (1) Compensation Law Com No 286 (Cm 6071)). Since that report aspects of the rule have been subject to authoritative exposition by the House of Lords in Waters itself, and more recently in *Transport for London v Spirerose Ltd* [2009] 1 WLR 1797; [2009] UKHL 44 ('*Spirerose*'). 10. Although the Law Commission's recommendations for a complete new code were not adopted by government, limited amendments to the 1961 Act in line with their recommendations were made by the Localism Act 2011 section 232 (relating to planning assumptions). Further proposed amendments, dealing with the no-scheme principle more generally, are currently before Parliament in the Neighbourhood Planning Bill 2016–17. The purpose of the latter is said to be that of 'clarify[ing] the principles and assumptions for the "no-scheme world", taking into account the case law and judicial comment' (Explanatory Notes para 70). The present appeal falls to be decided by reference to the 1961 Act as it stood before the 2011 amendments. 11. Section 5 rule 2 established the general principle that the value of land is taken to be 'the amount which the land if sold in the open market by a willing

seller might be expected to realise'. In applying this general principle, it is necessary for present purposes to take account of two other groups of provisions, relating first to 'disregards' of actual or prospective development (section 6 and Schedule 1), and secondly to 'planning assumptions' (sections 14–16).... It is in any event well-established that the application of the Pointe Gourde rule itself may result in changes to the assumed planning status of the subject land. Thus in *Melwood Units Pty Ltd v Main Roads Comr* [1979] AC 426, where land was acquired for an expressway, the Privy Council accepted that compensation should reflect the fact that but for the expressway project permission would have been obtained to develop the whole area for a drive-in shopping centre (p 433). That case, although decided under a different statutory code, has long been accepted as authoritative in this jurisdiction. It was cited without criticism in *Spirerose* (see paras 110ff per Lord Collins). Nor is there anything in section 6 to indicate that a more restrictive approach should be applied under the statutory disregards. In saying that the two stages should not be 'elided' (para 19 above), the tribunal as I understand them were doing no more than emphasising the difference between the statutory tests. 40. It has also long been accepted that application of the general law may produce a more favourable result for the claimant than the statutory planning assumptions. A striking illustration noted by the Law Commission (loc cit p 206–7) is provided by the two *Jelson* cases, relating to the same strip of land acquired for a road: *Jelson Ltd v Minister of Housing and Local Government* [1970] 1 QB 243, *Jelson Ltd v Blaby District Council* [1977] 1 WLR 1020. The refusal in the first case of a section 17 certificate for residential development, was held in the second not to prevent the tribunal taking account of the prospect of residential development under the Pointe Gourde rule (or section 9 of the 1961 Act). The difference lay in the criteria to be applied. Under section 17 attention was directed at the position as at the date of the deemed notice to treat, by which time development on either side of the strip had made further development impossible. Under the Pointe Gourde rule it was possible to look at the matter more broadly. Again this decision was cited without criticism in *Spirerose* (paras 105ff per Lord Collins).... The Upper Tribunal's decision in the present case is a powerful illustration of the potential complexities generated by the 1961 Act in its unamended form. It is to be hoped that the amendments currently before Parliament will be approved, and that taken with the 2011 amendments they will have their desired effect of simplifying the exercise for the future."—*Homes and Communities Agency v JS Bloor (Wilmslow) Ltd* [2017] UKSC 12.

POPPY STRAW. "This is an appeal by way of case stated. It raises and turns on the meaning and application of the definition of poppy straw in the Misuse of Drugs Act 1971 (the 1971 Act). The question is whether that definition covers the poppy head and poppy heads and stalks imported by the Appellant for use in flower arrangements. ... The relevant definition of 'poppy straw' in the 1971 Act is 'all parts, except the seeds, of the opium poppy after mowing'....

In my view, the Crown Court reached the wrong conclusion on the meaning of the statutory definition for the reasons set out above. In summary, they are:

i) as a matter of language, the inclusion of the concept of mowing into the definition limits the width or extent of what is poppy straw,

ii) as a matter of language, if the wide approach taken by the Crown Court is right there would be no need for any reference to mowing or any other means of removal

from the land because before any issue of exportation and importation arise the poppies must have been separated from the land,

iii) as a matter of the ordinary use of language, whole poppy heads (with and without stalks) have not been mown,

iv) it is easy to see that the poppy heads (with and without heads) in issue were harvested with care and, as matter of the ordinary use of language, were not mown,

v) the wide approach taken by the Crown Court to the interpretation of the word or concept of mowing is not supported by the purpose or effect of the 1961 Single Convention, and

vi) the wide approach taken by the Crown Court to the interpretation of the word or concept of mowing is not required to fulfil the underlying purposes of the UK licensing regime that applies to poppy straw or to avoid any lack of clarity, confusion or difficulties in its implementation.

I do not place weight on the ordinary meaning of 'straw' because 'poppy straw' is defined in the 1971 Act. However, I note that the ordinary use of that word links to the view that the 1961 Single Convention was addressing what had been regarded as an agricultural waste product."—*Marwaha v UK Border Revenue Agency (Cash And Compensation Team)* [2017] EWHC 2321 (Admin).

PORNOGRAPHIC MATERIAL. For the purposes of Pt 3 of the Digital Economy Act 2017, which prescribes the circumstances in which pornographic material may be made available online to prevent access to it by persons under 18, pornographic material is a video work in relation to which a R18 certificate has been or would be issued, or the material in the video work that was the reason for the R18 certificate, or material from whose nature it is reasonable to assume that it was produced solely or principally for the purposes of sexual arousal – and similar variations on the same theme (s.15). Extreme pornographic material is material whose nature is such that it is reasonable to assume that it was produced solely or principally for the purposes of sexual arousal, and which is extreme (s.22). See also the Online Pornography (Commercial Basis) Regulations 2019 (SI 2019/23), which define the circumstances in which pornographic material is to be regarded as being made available on a commercial basis for the purposes of Pt 3 of the 2017 Act.

Stat. Def., Digital Economy Act 2017 s.15. For "extreme pornographic material" see Digital Economy Act 2017 s.22. See PORNOGRAPHY.

PORNOGRAPHY. "In his evidence the Claimant described the Book as being partly 'soft core porn'. The Defendant strongly objected to that characterisation. I accept that the passages of the Book relating to sex between the parties were not written for the primary purpose of inducing sexual excitement in the reader, which is the hallmark of pornography. However, there is no doubt that the many of the passages could be described as graphic, if not explicit."—*Bull v Desporte* [2019] EWHC 1650 (QB).

PORT. Stat. Def. ("includes an airport and a hoverport"), Counter-Terrorism and Border Security Act 2019 Sch.3 para.64.

POSSESSION. "In neither statute is 'possession' defined. This court has considered the definition of possession under s.160 CJA 1988 for digital images held on a computer on several occasions. The matter was first considered in *Atkins v Director for Public Prosecutions* [2000] 2 Cr App R 248. The defendant in that case had viewed indecent images on his computer, but unknown to him, the images were automatically saved to the 'cache'. He was convicted under s.160 CJA 1988, the

magistrate holding that knowledge was not an essential element of the offence. He appealed to the Divisional Court, by way of case stated. The court held that this was not an offence of strict liability: knowledge was an essential element of the offence, and it had to be shown that the defendant knew of the existence of the 'cache' of images. This was said to accord with general principle in cases concerning physical possession of objects. In *R v Porter* [2006] EWCA Crim 560, Dyson LJ, giving the judgment of the court, held that in order for a person to have possession of an image contrary to s.160 CJA 1988, he must have custody or control of it – this required the particular individual to be capable of retrieving the images. The defendant in Porter had deleted a large number of indecent images from his computer, but they remained on his hard drive. They were accessible with specialist software, but the defendant did not have such software. The court found that there had been no direction by the trial judge about the factual state of affairs necessary for possession, thus removing a vital issue from the jury. Further, the court held that there was no direction on the mental element of possession – they opined, without deciding, that this would require proof that the defendant did not believe that the image in question was beyond his control. The principle in Porter was affirmed and applied in the decision of Lord Judge CJ, in *R v Leonard* [2012] EWCA Crim 277. The judge had misdirected the jury about the need for indecent images to be retrievable for the physical element of possession to be made out. Finally, a helpful analogy on what is meant by possession of extreme pornography is found in *R v Ding Chen Cheung* [2009] EWCA Crim 2965. The defendant was prosecuted under s.63 CJIA 2008, rather than s.160 CJA 1988. In our view, the legal requirements for possession are the same under both provisions. In that case, the defendant had obtained a bag containing a number of DVDs. Eight of those DVDs contained extreme pornographic material. It was the defendant's case that he knew the bag contained DVDs but that he did not know the content of those DVDs. Thomas LJ, giving the judgment of the court, held that the prosecution had to establish to the criminal standard that the appellant had knowledge of the existence of the 'things' that were in his custody or control, but did not have to prove the defendant's knowledge of the quality, or contents, of the thing. The defendant's knowledge of the contents could be addressed through the statutory defences. In many cases, the digital file may be shown to have been downloaded on purpose by the accused and thus possession established, as long as such an item is within the individual's custody or control. There again, any question of ignorance of the critical contents may be resolved by examination of the statutory defences. But what if an active download of the digital file by the accused cannot be established, or is not in question? As here, what if the accused claims that material was sent to him electronically, uninvited by one means or another, and by others? Such factual assertions may be contradicted by evidence: indeed it seems likely they often would be. However, that is a question of evidence. What is the requirement of the law of possession? In what way should a jury be directed if they face such a question? It cannot be the law that a defendant must be shown to be aware of all the relevant content of a digital file on his device. If that were necessary, then the statutory defences in s.160(2) CJA 1988 would be redundant. The question is whether it is enough that the accused should know that digital files had been sent to him, say, as an attachment to an email, or perhaps more likely as an encrypted file by one of the many apps by which digital content may be transmitted. Can possession be established by demonstrating that material is contained in an attachment to an unopened email in an inbox? Or, as claimed here, where the

information was transmitted through WhatsApp without any invitation from the accused, and without him viewing any or all of the material. There is such a volume of information in the memory of modern devices that proof of knowledge of all transmitted content would be impossible. For commercial reasons, many of the great internet business corporations collect and store information on phone and computer memories, individual to the user, but quite unknown and indeed inaccessible to the user. We are clear that the statute requires proof by the Crown of possession of the pornography or images of child abuse, as a preliminary step before the burden of proof shifts to the accused, to establish the statutory defences. An accused cannot be convicted in relation to material of which he was genuinely totally unaware. Nor could a defendant be said to be in possession of a digital file if it was in practical terms impossible for him to access that file. However, for these statutory purposes we are clear that possession is established if the accused can be shown to have been aware of a relevant digital file or package of files which he has the capacity to access, even if he cannot be shown to have opened or scrutinised the material. That represents the closest possible parallel to the test laid down in the authorities set out above, and appears to us to be consistent with the criminal law of possession in other fields, such as unlawful possession of drugs. It follows that in this case, two elements had to be made out in order for an individual to have possession: (1) the images must have been within the appellant's custody or control, i.e. so that he was capable of accessing them; and (2) he must have known that he possessed an image or a group of images. It is clear that knowledge of the content of those images is not required to make out the basic ingredients of the offence; instead that issue is dealt with by the statutory defences. Where unsolicited images are sent on WhatsApp, and automatically downloaded to the phone's memory, it is highly likely that the first element will be fulfilled. The second element will depend on whether the defendant knew that he received an image or images."—*Cyprian Okoro (No 3) v R* [2018] EWCA Crim 1929.

Stat. Def., "possession means exclusive occupation." Neighbourhood Planning Act 2017 s.30.

POSSESSIONS. "The starting point in any analysis of the meaning of 'possessions' or 'property' is *Kopecký v Slovakia* (2005) 41 EHRR 43 (see *Rowe v HMRC* [2015] EWHC 2293 (Admin) at first instance at paragraph 116 and in the judgment of McCombe LJ in the Court of Appeal reported at [2017] EWHC Civ 2105 at paragraphs 162 to 171). The court in that case noted that a violation of A1P1 could only be alleged where the acts complained of related to the Applicant's 'possessions'. Possessions could be either (a) 'existing possessions' or (b) assets, including claims which allow the applicant to argue that he has at least a 'legitimate expectation' of obtaining effective enjoyment of a property right. A genuine dispute about title or a mere arguable claim to title would not be sufficient to give the applicant a legitimate expectation. I will refer to these types of possession as class A and class B."—*Flannigan, R (On the Application Of) v The Director of Legal Aid Casework the Lord Chancellor* [2018] EWHC 1927 (Admin).

"In particular, the question of what amounts to a possession for the purposes of the Convention is clear from the Strasbourg cases, and it is not in dispute that the leases purportedly conferred by the 2003 Act were 'possessions'. The concept of legitimate expectation is also discussed at length in cases before the European Court of Human

Rights, and we consider that once again the concept is well established."—*McMaster, Statement of Reasons in the Application by R A McMaster Against the Scottish Ministers* [2018] ScotCS CSIH 64.

POSTED. "It is also accepted that 'posted' has a similar meaning as 'published' in a defamation action."—*JR20 v Facebook Ireland Ltd* [2017] NICA 48.

POTTING. "These three cases, otherwise unconnected, were listed together because each raises issues as to a form of assault which is colloquially referred to as 'potting'. That unattractive name is given to a prisoner either throwing at a prison officer, or smearing a prison officer with, urine, faeces or a mixture of the two. Misconduct of that nature is sometimes dealt with as an offence against prison discipline, for which a Governor's punishment is imposed. In each of these cases, however, and in other cases, the prisoner has been prosecuted for an offence, contrary to section 24 of the Offences Against the Person Act 1861, of unlawfully and maliciously administering a noxious thing with intent to injure, aggrieve or annoy (hereafter, for convenience, 'a section 24 offence'). At paragraphs 25 and 26, we give our conclusion on the issue of whether urine is capable of being a noxious thing in this context."—*Veysey v R.* [2019] EWCA Crim 1332.

POW. "'Pow' is a Scots word that means a ditch, slow-running stream or channel of water. The Pow of Inchaffray provides drainage to approximately 1,930 acres of surrounding land near Crieff in Perth and Kinross and is the equivalent of 13.7 miles long. The land that it drains is defined in the bill as 'benefited land', and those who own land or property there are called 'heritors' and must pay the commission a share of its annual budget for the upkeep of the pow."—Preliminary Stage of the Bill for the Pow of Inchaffray Drainage Commission (Scotland) Act 2019, Scottish Parliament 16 November 2017.

PRECARIOUS. "The foreign national contends that the determination is unlawful on the ground that her removal would violate her right to respect for her private life under article 8 of the European Convention on Human Rights and section 6(1) of the Human Rights Act 1998 ('the 1998 Act'). Section 117B(5) of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') provides that little weight should be given to a private life which she established at a time when her immigration status was 'precarious'. What does the word 'precarious' mean in this context? This is the primary question posed by the present appeal. . . . I do not consider that the ordinary meaning of the word 'precarious' requires, or that in its context Parliament must have intended the word to require, that its application to the facts of a case should depend upon a subtle evaluation of the overall circumstances such as Sales LJ had in mind. 43. The bright-line interpretation of the word 'precarious' in section 117B(5), commended by the specialist tribunal with the maximum weight of its authority, is linguistically and teleologically legitimate; and, for that matter, it is consistent with the way in which the ECtHR expressed itself in the Jeunesse case (see para 34 above) and in which this court expressed itself in the Agyarko case (see para 35 above). 44. The answer to the primary question posed by the present appeal is therefore that everyone who, not being a UK citizen, is present in the UK and who has leave to reside here other than to do so indefinitely has a precarious immigration status for the purposes of section 117B(5)."—*Rhuppiah v Secretary of State for the Home Department* [2018] UKSC 58.

PREFERENCE. "Although section 166A was only recently added, the statutory expression 'reasonable preference' in this context is not a new one. It is agreed

between counsel and appears to be well established that the word 'preference' must be read and understood in the sense of priority. There is now a considerable and still-growing body of authority in this field. An early case was *R. v Wolverhampton MBC ex parte Watters* (1997) 29 HLR 931. There, the claimant was in a category of person who was entitled to reasonable preference under the legislation then in force, but she had significant rent arrears which had the effect under the housing authority's policy that she would not be admitted to their housing waiting list. It was argued on that claimant's behalf that '... because Parliament have ordained that reasonable preference is to be given, a council cannot treat it as reasonable not to grant any preference. Otherwise [the then-relevant section] would be otiose.' (See in the judgment of Leggatt LJ at page 935.)"—*Woolfe, R. (on the application of) v London Borough of Islington* [2016] EWHC 1907 (Admin).

PREMISES. "I consider that each part of each of the floors, as separately demised on the relevant date, is a separate set of premises within the meaning of the definition of 'flat'. Each part of each floor was given its separate identity not just by being enclosed by external walls and a dividing wall, but was given functional identity (as well as a precisely defined extent) by the terms of the new underleases. Each demised area was separated from the other by the dividing wall with doors in it. The doors were kept locked. They were there for the purpose only of facilitating the fitting out of the flats at a later time. The doors were not there so that each demised area could be used together with the other demised area, only for passing through one flat into the other. It was intended that, after completion of the fit out, the doors would be removed and the dividing wall fully built. Each demised area was in my judgment a separate set of premises on the relevant date and held as such by different tenants under the terms of the new occupational underleases. . . . In my judgment, the statutory definition of 'flat' in the 1993 Act, is, like the definition of 'house' in the 1967 Act, concerned with the purpose for which premises have been constructed or subsequently adapted. The relevant question is whether they have been constructed or adapted for use for the purposes of a dwelling or for use for some other purposes. If the latter, the separate set of premises so constructed or adapted is not a 'flat'. The test is not whether the separate set of premises has reached such an extent of fitting out, or remains in such good condition, that it can actually be used for living, eating and sleeping purposes on the relevant date. The Boss Holdings decision seems to me to be on point in this regard. Each of the four separate sets of premises in existence on the sixth and seventh floors have been constructed for use for residential purposes, even though their current condition precludes actual use for those purposes."—*Aldford House Freehold Ltd v Grosvenor (Mayfair) Estate* [2018] EWHC 3430 (Ch).

Stat. Def. ("includes any place, plant, machinery, equipment, apparatus, vehicle, vessel, aircraft, hovercraft, tent, temporary or movable building or structure"), Control of Trade in Endangered Species Regulations 2018 reg.2.

PRESCRIPTION ONLY MEDICINE. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

PRIMARY LEGISLATION. Stat. Def., "means—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) a Measure or Act of the National Assembly for Wales, or

(d) Northern Ireland legislation" (European Union (Withdrawal) Act 2018, s.20(1)).

PRIMARY MEDICAL SERVICES PROVIDER. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

PRIVILEGED. "It is apparent from this definition that the word 'privileged' is used in the ordinary prison sense of being a discretionary benefit bestowed to prisoners, rather than the technical legal sense which would apply for example to correspondence between a prisoner and his solicitor."—*Beggs Against the Scottish Ministers* [2018] ScotCS CSOH 110.

PROCEEDINGS. "Giving the lead majority judgment, Rix LJ undertook a close analysis of earlier authorities on the meaning of 'proceedings': *Masson Templier & Co v De Fries* [1910] 1 KB 535 and *Wright v Bennett* [1948] 1 KB 601. He observed at [42] that 'Although it would be perfectly natural to think of an appeal as arising from and being part of the same proceedings as the trial from which the appeal is taken, it is nevertheless clear that trial and appeal have been treated as separate proceedings for the purposes of costs'. He referred also to provisions of the CPR, including 47.1 and 47.2, as showing that this distinction 'is still recognised and written into current rules'. Whether or not the distinction applied in the case of section 29 depended on its purpose and context. Rix LJ, and Etherton LJ, concluded that it did apply to section 29. At [58], Rix LJ referred to 'a well-known distinction, made in the context of costs liability, between costs of trial and appeal where trial and appeal are spoken of as different proceedings' and said that 'the word 'proceedings' in section 29 should be given its traditional meaning which distinguishes between proceedings at trial and on appeal". Etherton LJ also referred at [62] to CPR 47.1 and 47.2 as making the distinction between first instance and appeal proceedings." *Khaira v Shergill* [2017] EWCA Civ 1687.

PROCEEDINGS IN A CRIMINAL CAUSE OR MATTER. "In my opinion, the Appellants are entitled to succeed on this appeal because in its ordinary and natural meaning 'proceedings in a criminal cause or matter' include proceedings by way of judicial review of a decision made in a criminal cause, and nothing in the context or purpose of the legislation suggests a different meaning."—*Belhaj v Director of Public Prosecutions* [2018] UKSC 33.

PROCESS. "In my view, there is nothing in the word 'process' itself which implies a transition or change. The cases under the Capital Allowances Act 1968 were no doubt coloured by the context, related to 'industrial' buildings, and the need for goods to be 'subjected' to a process. This is apparent in particular from the opinion of Lord Guthrie in the *Kilmarnock* case (42 TC 675, 681, 1966 SLT 224, 228). He recognised 'process' as a word with 'various meanings some wider than others', including 'the widest significance of "anything done to the goods or materials"'; but in conjunction with the word 'subjection' a narrower reading was appropriate. I agree respectfully with that view of the wider meaning of the word 'process', which is also consistent with the standard dictionary definitions. A 'trade process' is simply a process (in that wide sense) carried on for the purposes of a trade. 40. Mr Kolinsky submits that, in the context of Iceland's trade, the word is apt to cover 'the continuous freezing or refrigeration of goods to preserve them in an artificial condition'. I agree. Since the services provided by the relevant plant have been held to be used 'mainly or exclusively' as part of that trade process, they should be left out of account for rating purposes."—*Iceland Foods Ltd v Berry (Valuation Officer)* [2018] UKSC 15.

PROCESSING (DATA). Stat. Def., Data Protection Act 2018 s.3.

PROCESSOR (DATA). Stat. Def., Data Protection Act 2018 s.3.

PRODUCT. Stat. Def., Public Regulated Service (Galileo) Regulations 2018 reg.2.

PROFESSIONAL STANDARDS. Stat. Def., Children and Social Work Act 2017 s.63.

PROFILING. Stat. Def., Data Protection Act 2018 s.33.

PROPENSITY. "Even if counsel for Shaw was right in the submission that similar fact evidence could only be admitted now as a species of propensity, contrary to our view above, we consider it would not assist his client here because the evidence of C also went to propensity and was admissible on that basis. It is useful to remember the meaning of propensity which is not defined in the 2004 Order. The 6th Edition of the shorter Oxford English dictionary defines it as: '(an) inclination, (a) tendency, (b) leaning, bent, disposition …' Chambers English dictionary describes it as: 'inclination of mind; favourable inclination; tendency to good or evil: disposition: tendency to move in a certain direction.' I had to address this issue in *R v Louis Maguire and Christopher Power* [2016] NICC 14 at paragraphs 15 and 16: '[15] In deciding whether these convictions show a propensity to commit murder and to make it more likely that the defendant, Maguire, did, commit the murder, one has to look at the nature of the killing here. It is not by poisoning. It is not by hiring a contract killer. It is not by terrorists in the pursuit of some alleged political aim. It is not by drowning or by motor vehicle. It is the application of brute force to another human being, in this case with a hammer. [16] In that context it seems to me that previous assaults or, to a degree, threats of assault, do demonstrate a propensity to assault; that is undeniable. The situation here is that the fatal attack on Mr Ferguson was an assault at one extreme of a scale of gravity of assault. The opposite end of that scale is a simple threat to punch someone which in law is an assault. In one sense at least, therefore, the history of wounding, assaults and threats are of the same kind as this type of murder. It seems to me that decisions of this sort are likely to be fact specific and I note the express finding of the Court of Appeal in England that it will be slow, as our Court has been slow, to interfere with the exercise of judgment by a Trial Judge in these circumstances.'"—*Shaw, R v* [2018] NICA 38.

PROPERTY. "15. As to what constitutes 'property', this is always 'heavily dependent on context…—something can be "proprietary" in one sense while also being non-proprietary in another sense': M Conaglen, 'Thinking about proprietary remedies for breach of confidence' (2008) *Intellectual Property Quarterly* 82, 89, referring to R Nolan, *Equitable Property* (2006) 122 LQR 232, 256–257. As the Chancellor noted (para 62), there is a school of thought (which can be dated to FW Maitland, *Equity—a Course of Lectures* (1936)) which analyses the equitable interests created by a common law trust not as proprietary, but as personal or 'obligational', even as against third parties. The issue 'whether trusts are properly seen as part of the law of property or as an aspect of the law of obligations' is described by Swadling in Burrows, *English Private Law* (3rd ed) (2013) para 4.140 as a 'difficult question'; see also Burrows, *The Law of Restitution*, (3rd ed) (2011), pp 191–193, Nolan, *Equitable Property* (2006) 122 LQR 232. Supporters of a personal analysis include B McFarlane, *The Structure of Property Law* (2008); see also Watt, *The Proprietary Effect of a Chattel Lease* (2003) Conveyancer and Property Lawyer 61. A recent discussion of the pros and cons of each analysis appears by P Jaffey in *Explaining the Trust* (2015) 131 LQR 377. Jaffey concludes that, although a trust involves personal rights against the trustee, only a proprietary analysis explains satisfactorily those

aspects which concern the beneficiary's position vis-à-vis third parties, such as the trustee's creditors and recipients of unauthorised transfers of trust property."—*Akers v Samba Financial Group* [2017] UKSC 6.

"The question raised by the present appeal is whether, where a bankruptcy order is made against a barrister, fees due to him pursuant to an honorarium rather than a contract vest in his trustee in bankruptcy. The first respondent, Mr Nicholas George, is a barrister who was adjudged bankrupt on 21 March 2012 and the appellant, Mr Simon Gwinnutt, has been his trustee in bankruptcy since 24 April 2012. Mr Gwinnutt contends that sums 'owed' to Mr George when he became bankrupt vested in him as trustee in bankruptcy under section 306 of the Insolvency Act 1986 ('the 1986 Act').... Non-contractual barristers' fees were unique in nature. A barrister had more than a mere moral claim to such fees and more than just a hope (or 'spes') that he would receive them. If needs be, the barrister could invoke the Bar Council's 'Withdrawal of Credit Scheme', and a solicitor's failure to pay a fee could potentially amount to professional misconduct. The highly unusual character of a barrister's fee is also manifest in the client's inability to revoke his solicitor's authority to pay counsel and the solicitor's right to reimbursement. The law recognised that, notwithstanding the absence of a contract, payment of an outstanding fee was not to be regarded as voluntary. In practice, a barrister would normally be paid. In the circumstances, it seems to me that a barrister's fees, even when non-contractual, are 'property' for the purposes of the 1986 Act and so vest in a trustee in bankruptcy. 'Property' is explained in the widest of terms in section 436, but even that 'definition' is inclusive rather than comprehensive. The Huggins case illustrates the breadth of 'property' and provides an analogy to the present case. It would, moreover, be entirely anomalous if barristers' fees were not viewed as 'property'. Were any other professional to become bankrupt, his aged debt would vest in his trustee, and so should a barrister's. The statutory objective, reflecting the principle of public policy recognised in *Hollinshead v Hazleton*, is that 'subject to certain specific exceptions, all a debtor's property capable of realisation should be vested in the trustee for him to realise and distribute the proceeds among the creditors' (in the words of Mummery LJ). Unpaid fees, regardless of whether they are contractual, are capable of realisation. The fact that something can be realised or turned to account does not invariably make it 'property', but it seems to me to point in that direction and, here, the expectation of payment is not founded on mere hope or morality but reflects the unique nature of non-contractual barristers' fees. As I say, payment of such a fee was not to be regarded as voluntary."—*Gwinnutt v George* [2019] EWCA Civ 656.

"The administrator's power to assign a cause of action is conferred by paragraph 2 of schedule 1 to the 1986 Act, as a cause of action is 'property' within that paragraph. That paragraph is not limited by any words which require the administrator to satisfy himself as to the arguability of an alleged cause of action."—*LF2 Ltd v Supperstone (Administrators of Pennyfeathers Ltd)* [2018] EWHC 1776 (Ch).

"The essential question argued before me was whether a 'moral' right or a right 'in honour' to fees, without any legal entitlement to the same, amounted to 'property' within s.436. On the face of things, it is difficult to see that an obligation which is not a contractual one and which is simply a moral obligation can be 'property'. Of course, the background circumstances may be different but no-one would suggest that a moral obligation on a parent to support their bankrupt adult child would be property vesting in the child's trustee, even if that obligation had been crystallised as a non-binding

legal promise to pay a certain sum. Mr Hackett submitted that the parent/child relationship is very different from the commercial relationship of barrister and solicitor. I accept that, but I do not accept that the law can draw distinctions between the strength of different moral obligations and say that some are property for these purposes, and others are not. I do not even find myself being in a position akin to that where I might not be sure precisely where to draw the division between night and day but I do know that midnight is in the night and noon is in the day. . . . A few general points can be made: (1) The definition in s.436 is non-inclusive and (to some extent) circular. 'It is not in truth a definition of the word 'property'. It only sets out what is included.' (per Aldous LJ in *Ord v Upton* [2000] Ch 352 at 360). (2) 'It is harder to think of a wider definition of property' (per Lord Browne-Wilkinson in *British Airport plc v Powdrill* [1990] Ch 744 at 759 (3) The principle of public policy expressed in the Insolvency Code (said in relation to the Bankruptcy Acts but in my judgment the position has not changed) is that: 'in bankruptcy the entire property of the bankrupt, of whatever kind or nature it be, whether alienable or inalienable, subject to be taken in execution, legal or equitable or not so subject, shall, with the exception of some compassionate allowances for his maintenance, be appropriated and made available for the payment of his creditors' (per Lord Atkinson in *Hollinshead v Hazleton* [1916] 1 AC 428 at 436 As put by Mummery LJ in *Patel v Jones* [2001] PLR 217 at paragraph 39: '..the statutory objective of the provisions of the 1986 Act [is] that, subject to certain specified exceptions, all a debtor's property capable of realisation should be vested in the trustee for him to realise and distribute the proceeds among the creditors.' . . . Any unpaid fees of Mr George as at the date of commencement of his bankruptcy which arise under a non-contractual, honorarium engagement do not, or have not, vested in his trustee in bankruptcy."—*Gwinnutt v George* [2018] EWHC 2169 (Ch).

Stat. Def. ("includes property wherever situated and whether real or personal, heritable or moveable, and things in action and other intangible or incorporeal property"), Counter-Terrorism and Border Security Act 2019 Sch.3 para.64.

PROPOSES. "First, in the context of paragraph 26, 'proposes' and 'intends' are, in my judgment, synonyms. While paragraph 26(1) requires a person who proposes to make an appointment to give written notice to the persons there specified, paragraph 26(2) (as amended by the Deregulation Act 2015 with effect from 1 October 2015) refers to such person as '[a] person who gives notice of intention to appoint under sub-paragraph (1)'. The same form of words is used in paragraph 27(1), while the heading to paragraphs 26–28 is 'Notice of intention to appoint'. The judge dismissed these references as 'simply shorthand references to a paragraph 26 notice'. While true, that does not explain why the notice is repeatedly described as a notice of intention, if the word 'proposes' meant something different from 'intends'. In my view, the natural reading of these provisions is that a single meaning was intended. This is certainly how the framers of the relevant Insolvency Rules and prescribed forms understood the paragraphs. Second, I have difficulty in seeing that, either as a matter of ordinary language or in the context of paragraph 26, there is a significant difference in the meaning of a person proposing to do something and a person intending to do that thing."—*JCAM Commercial Real Estate Property XV Ltd v Davis Haulage Ltd* [2017] EWCA Civ 267.

PROPRIETARY. See PROPERTY.

PUBLIC. Stat. Def. (includes 'any organisation or body representing or having an interest in the environment, health, business or consumers'), National Emission Ceilings Regulations 2018 reg.2.

PUBLIC AUTHORITY. Stat. Def., Data Protection Act 2018 s.7.

PUBLIC BODY. Stat. Def., Data Protection Act 2018 s.7.

PUBLIC INTEREST. "'Public interest' in publication cases (including defamation, confidence, privacy, DPA and copyright cases) is necessarily a broad concept. As Lord Bingham explained in *Reynolds v Times Newspapers Ltd* [2000] EMLR, [2001] 2 AC 127 at pp.176-177 (in a passage cited by Lord Phillips in *Flood v The Times* [2002] UKSC 11, [2012] 2 AC 273 at [33]): 'By ["public interest"] we mean matters relating to the public life of the community and those who take part in it, including within the expression public life activities such as the conduct of government and political life, elections ... and public administration, but we use the expression more widely than that, to embrace matters such as (for instance) the governance of public bodies, institutions and companies which give rise to a public interest in disclosure, but excluding matters which are personal and private, such that there is no public interest in their disclosure.' The CJEU most often define 'public interest' material as that which contributes to a debate of general interest. In examining whether material contributes to such a debate, it is relevant to look, in particular, at the context of the publication (see e.g. *Bladet Tromsø v Norway* App. No 21980/93 at [62]-[63] in which the context was an ongoing public debate in Norway about seal hunting). Gatley on Libel and Slander (12th edition, at paragraph 15.6) contains the following useful list of subject-matter which has previously been held to be in the public interest: '[T]he business of government and political conduct; the promotion of animal welfare, the protection of health and safety, the dealings of an MP with a foreign regime hostile to this country, the fair and proper administration of justice, the conduct of religious groups; discipline in schools; the conduct of the police; cheating, corruption and the pressure on elite athletes from an early age in sport; breach of charitable fiduciary rules; involvement in serious crimes, corporate malpractice; and the correction of prior misrepresentations by others'."—*Serafin v Malkiewicz* [2019] EWCA Civ 852.

PUBLIC PLACE. "There is no statutory definition of 'public place' in the RTA 1988, however that term has to be construed ejusdem generis with 'road' (which is defined in s 192(1) as 'any highway or other road to which the public has access'). Hence, the words 'public place' are to be construed as representing a place to which the public has access: Spence, supra, p354; Vivier, supra, pp19-20. ... In May, supra, [4], Laws LJ set out the following propositions as accurately summarising the relevant legal principles: a. The burden of proving that a particular location is a 'public place' rests on the Crown to prove beyond reasonable doubt; b. There must be evidence that the public actually utilised premises before a court can conclude that they are a 'public place'. It is not sufficient to say that the public could have access if they were so inclined: Spence, supra. c. Premises will be private where they are entered for reasons beneficial to the occupier: Vivier, supra, p24d, or where they are visited for business purposes: *Harrison v Hill* 1932 JC 13, 16; d. However, even business premises will be 'public' if the location is a public service, a railway station, a hospital or other public utility: ex parte Taussik, supra, [20]. This will include a pub car park during licensed hours: *R v Waters* (1963) 47 Cr App R 149,154; e. A distinction is to be made where premises are occupied by a large number of people – even if there has been a condition of entry for those people, the premises will be a 'public place': *Planton v Director of*

Public Prosecutions [2002] RTR 9, [17] (explaining Vivier, supra). This is because a potentially large number of individuals need to be caught or protected by the umbrella of the legislation. In connection with (b), it is important to make clear that the public's use of the place in question must be lawful. In other words, the public must have express or implied permission to access it."—*Scott Richardson v Director of Public Prosecutions* [2019] EWHC 428 (Admin).

Stat. Def. ("includes any place to which, at the time in question, the public have or are permitted access, whether on payment or otherwise"), Offensive Weapons Act 2019 s.6(9).

PUBLIC SAFETY. Stat. Def., Space Industry Act 2018 s.2.

PUPPY. Stat. Def., Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2.

PURPOSE. "With great respect to the judge, I think that his analysis in terms of the 'purpose' for which the relevant part of the Guidance was included is unduly narrow. If one approaches the matter on the basis that the powers conferred by the legislation must be exercised for a 'pensions purpose', then in giving guidance as to the extent to which non-financial considerations might be taken into account in an authority's investment strategy the Secretary of State was in my view acting for an obvious pensions purpose; and the fact that he took into account considerations of foreign policy and defence policy in formulating the relevant part of the Guidance did not convert it from a pensions purpose into a non-pensions purpose. So too, whilst the judge took the view that the Secretary of State had to justify the distinction drawn between the relevant part of the Guidance and the parts relating to other non-financial considerations by reference to a pensions purpose, the Secretary of State was entitled in my view to take into account wider considerations of public interest in drawing the distinction he did, and by drawing such a distinction he did not cease to act for a pensions purpose in issuing the Guidance. For my part, however, I would avoid the language of 'pensions purpose', which is at best a shorthand and is liable to mislead; and I would say the same about the expression 'from a pensions perspective' which was used by the judge. In considering whether the relevant part of the Guidance falls within the scope of the 2013 Act and the 2016 Regulations, I find it more helpful to put the question in terms of whether the legislation permits wider considerations of public interest to be taken into account when formulating guidance to administering authorities as to their investment strategy; and as I have said, given the framework nature of the statute and the broad discretion it gives to the Secretary of State as to the making of regulations and the giving of guidance, I can see no reason why it should not be so read."—*Palestine Solidarity Campaign Ltd, R (on the application of) v Secretary of State for Communities and Local Government* [2018] EWCA Civ 1284.

PYROLYSIS. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

Q

QUASH. "In my judgment these submissions on the construction of the statute are unsustainable. Mr Banner's argument on the meaning of 'quash' founders on the long accepted rule—acknowledged by Sir Clive Lewis ('all legal effect')—that the effect of an order to quash, certiorari in the old language, was to render the instrument in question as if it had never been. If only the confirmed CPO were quashed, leaving the made CPO, the latter would still have legal effects: appeal rights, and the Secretary of State's duty to hold a public inquiry (s.13A of the 1981 Act). Mr Banner was driven to submit that only the substantive legal effect of the CPO—that is, the land's acquisition—was the target of a quashing order under s.24. But as soon as such niceties arise, they are refuted by the plain riposte that if Parliament had intended such distinctions, it would have said so. Mr Harris' position fares no better. It is not possible to construe the term 'compulsory purchase order' as it appears in s.24(2) as referring only to the CPO after confirmation and publication. It bears the meaning (by cross-reference from s.7) given by s.2. Reading s.2(1) and (2) together demonstrates, conspicuously in my view, that the term is intended to refer compendiously to the CPO as made and confirmed. The fact that the CPO is only 'operative' after publication of its confirmation does not imply, in light of s.2, that the instrument in its earlier stages is not under the statute a CPO at all. As my Lord David Richards LJ pointed out in the course of argument, the attributes of authorisation and confirmation of the CPO are treated as different concepts in s.2(2). The CPO is, as it were throughout its incarnation, recognised as the source of authority for the land's acquisition notwithstanding that its authority does not bite until after publication. 20. In short, 'compulsory purchase order' means the instrument so called from first to last. If the legislature had intended to allow for relief going only to its confirmation, it would have so provided."—*Grafton Group (UK) Plc v Secretary of State for Transport* [2016] EWCA Civ 561.

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RANGE CONTROL LICENCE. Stat. Def., Space Industry Act 2018 s.7.

RANGE CONTROL SERVICES. Stat. Def., Space Industry Act 2018 s.6.

REAL AND IMMEDIATE RISK. "There has been no discussion in the Strasbourg or domestic case-law of what the term 'real and immediate risk' connotes in the context of article 4. However, the effect of the same phrase in the context of article 2 was considered by the *Supreme Court in Rabone v Pennine Care NHS Trust* [2012] UKSC 2, [2012] 2 AC 72. The Strasbourg case-law had in that context also elaborated out of the very general language of the article an operational duty on the relevant authorities to take appropriate steps to protect an individual whose life is at 'real and immediate risk': see para. 116 of the judgment of the Court in *Osman v United Kingdom* (1998) 29 EHRR 245. The issue in Rabone was whether that operational duty arose in the case of a psychiatric in-patient who had committed suicide while on a permitted home visit. The leading judgment is that of Lord Dyson. He noted at para. 35 (p. 90 F-G) the finding of the trial judge, based on the evidence of the Trust's expert witness (Dr Caplan), that the risk of the patient attempting suicide was (at different times during his visit) between 5% and 20%. He then said, at paras. 37-39 (p. 91 B-F). '37. I accept that it is more difficult to establish a breach of the operational duty than mere negligence. This is not least because, in order to prove negligence, it is sufficient to show that the risk of damage was reasonably foreseeable; it is not necessary to show that the risk was real and immediate. But to say that the test is a high one or more stringent than the test for negligence does not shed light on the meaning of "real and immediate" or on the question whether there was a real and immediate risk on the facts of any particular case. 38. It seems to me that the courts below were clearly right to say that the risk of Melanie's suicide was "real" in this case. On the evidence of Dr Caplan, it was a substantial or significant risk and not a remote or fanciful one. Dr Caplan and Dr Britto (the claimants' expert psychiatrist) agreed that all ordinarily competent and responsible psychiatrists would have regarded Melanie as being in need of protection against the risk of suicide. The risk was real enough for them to be of that opinion. I do not accept [counsel for the Trust's] submission that there had to be a "likelihood or fairly high degree of risk". I have seen no support for this test in the Strasbourg jurisprudence. 39. As for whether the risk was "immediate", [counsel for the Trust] submits that the Court of Appeal failed to take into account the fact that an "immediate" risk must be imminent. She derives the word "imminent" from what Lord Hope said in *Van Colle v Chief Constable of the Hertfordshire Police* [2009] 1 AC 225, para 66. In the case of In *re Officer L* [2007] 1 WLR 2135, para 20, Lord Carswell stated that an apt summary of the meaning of an "immediate" risk is one that is "present and continuing". In my view, one must guard against the dangers of using other words to explain the meaning of an ordinary word like "immediate". But I think that the phrase "present and continuing" captures the essence of its meaning. The idea is to focus on a risk which is present at the time of the alleged breach of duty and not

a risk that will arise at some time in the future.' Mr Buttler submitted that that approach was equally applicable to a case under article 4. I broadly agree. In particular, I agree that in the context of article 4 also a 'real' risk does not connote a likelihood, or 'fairly high degree' of probability; and that 'immediate' does not necessarily mean 'imminent'. The former point is also clearly made by Sedley LJ in *Batayav v Secretary of State for the Home Department* [2003] EWCA Civ 1489: see paras. 37 and 38 of his judgment. However, the precise application of the 'real and immediate risk' test is inevitably sensitive to the particular factual situation under consideration, and I do not think Rabone is useful beyond establishing the points of principle referred to above. In particular, the kind of statistical quantification of risk that was available on the evidence in that case will not be possible in many kinds of case and is in my view not necessary. As appears from para. 38 of Lord Dyson's judgment, the essential question is simply whether the material available shows a sufficient risk – in this case of re-trafficking – for protective measures to be needed."—*TDT, R (On the Application Of) v The Secretary of State for the Home Department* [2018] EWCA Civ 1395.

REAL PROSPECT OF SUCCESS. "The effect of these new sections is to bring in a time limit within which judicial review of administrative decisions may be brought before the court and provides that the petitioner must obtain the permission of the court to proceed. The court may only grant permission if it is satisfied that the petitioner has a sufficient interest in the subject matter and it has a real prospect of success.... I agree with Lady Wolffe that the language is clear. She referred to the observations of Lord Woolf in *Swain v Hillman* [2001] 1 All ER 91 (at 92) considering a similar test in the English Civil Procedure Rules. He said the words do not need amplification; they speak for themselves (paragraph 37 of *Ocheimhan*). There is a danger in my opinion in over analysing the clear words of a statute. Having considered the matter I do not think I can usefully add much to the debate by conducting my own review of authority. [16] My own conclusion is that the language of the test directs the court to the prospects of success rather than whether the case is stateable or arguable. That is important. Many things are arguable; the ingenuity of counsel knows no bounds. Focussing on arguability may inhibit the court in addressing the mischief that section 27B(2)(b) is designed to address; the prevention of unmeritorious claims proceeding (see Lady Wolffe in *Ocheimhan* at paragraph 32). In the immigration context, for example, the infelicitous use of a phrase or word in a decision letter or determination may give rise to an argument that there has been an error of law. But it may have no real prospect of success because it is clear from a reading of the offending word or words in context that there is no error. [17] The word 'real' simply means genuine rather than fanciful or speculative. It is not a high standard but the court must be satisfied that there is some prospects of success."—*Fei (AP), Re Judicial Review* [2016] ScotCS CSOH 28.

"[9] As Lord Boyd said in CF (China) Petitioner (supra), it is important not to over-analyse the clear words of the statute. The words 'real prospect of success' mean what they say. However, they were introduced against the background of *EY v Secretary of State for Scotland* (supra) and were intended to replace the former 'manifestly without substance' test for first orders. They were designed to set a higher hurdle than that which was described in EY as 'low'. The new test is certainly intended to sift out unmeritorious cases, but it is not to be interpreted as creating an unsurmountable barrier which would prevent what might appear to be a weak case

being fully argued in due course. Of course the test must eliminate the fanciful, but it is dropping the bar too low to say that every ground of review which is not fanciful passes the test. It is not enough that the petition is not 'manifestly devoid of merit', since that, in essence, reflects the 'manifestly without substance' test adopted in EY. The applicant has to demonstrate a real prospect, which is undoubtedly less than probable success, but the prospect must be real; it must have substance. Arguability or statability, which might be seen as interchangeable terms, is not enough (SCCR c 12, para 53). The substance, or the lack of it, is something which the court has to determine as a preliminary issue; not after a full consideration of elaborate pleadings. It is important therefore that those seeking permission are able to plead their cases accurately and, crucially, succinctly both in relation to the facts and the propositions in law."—*Wightman, MSP and Others, Reclaiming Motion by against the Advocate General* [2018] ScotCS CSIH 18.

REASONABLE CAUSE TO SUSPECT. "The question which arises on this appeal concerns the correct meaning of the expression 'has reasonable cause to suspect' in section 17(b). Does it mean that the accused must actually suspect, and for reasonable cause, that the money may be used for the purposes of terrorism? Or is it sufficient that on the information known to him there exists, assessed objectively, reasonable cause to suspect that that may be the use to which it is put? . . . A similar formulation ('intending … or having reasonable cause to suspect') was applied by the 1989 Act to the related offence contrary to section 9(1) of soliciting or receiving contributions; this offence had, in previous statutes, required proof of intention rather than of any form of suspicion. These changes can only have been deliberate. They are inexplicable unless it was the Parliamentary intention to widen the scope of the offences to include those who had, objectively assessed, reasonable cause to suspect that the money might be put to terrorist use, as well as those who intended that it should be, or knew that it would be. In particular, the change in the definition of the offence which is now section 17 of the Terrorism Act 2000, and here under question, is a change from 'knows or suspects' to 'knows or has reasonable cause to suspect'. That change can only have been intended to remove the requirement for proof of actual suspicion. It is not open to the court to ignore this kind of clear Parliamentary decision. . . . In the present case it would be an error to suppose that the form of offence-creating words adopted by Parliament result in an offence of strict liability. It is certainly true that because objectively-assessed reasonable cause for suspicion is sufficient, an accused can commit this offence without knowledge or actual suspicion that the money might be used for terrorist purposes. But the accused's state of mind is not, as it is in offences which are truly of strict liability, irrelevant. The requirement that there exist objectively assessed cause for suspicion focuses attention on what information the accused had. As the Crown agreed before this court, that requirement is satisfied when, on the information available to the accused, a reasonable person would (not might or could) suspect that the money might be used for terrorism. The state of mind of such a person is, whilst clearly less culpable than that of a person who knows that the money may be used for that purpose, not accurately described as in no way blameworthy. It was for Parliament to decide whether the gravity of the threat of terrorism justified attaching criminal responsibility to such a person, but it was clearly entitled to conclude that it did. It is normal, not unusual, for a single offence to be committed by persons exhibiting different levels of culpability. The difference in

culpability can, absent other aggravating features of the case, be expected to be reflected in any sentence imposed if conviction results."—*Lane, R v* [2018] UKSC 36.

REASONABLE EXCUSE. "The central question in this appeal is whether, at least in the particular circumstances of the case, self-induced intoxication could properly amount to a 'reasonable excuse' for failing to provide a specimen of breath for analysis, for the purposes of an alleged offence under section 7(6) of the Road Traffic Act 1988.... It is well established that a 'reasonable excuse' for the purposes of section 7(6) may include non-medical reasons (see, for example, *Smith v Hand* [1986] R.T.R. 265, where the defendant was told that he could wait for his solicitor before providing a sample; and *Chief Constable of Avon and Somerset Constabulary v Singh* [1988] R.T.R. 107, where the defendant, because of his lack of understanding of the English language, did not understand what was said to him as to the requirement to provide a specimen). What constitutes a 'reasonable excuse' will always be a question of fact to be decided by the court.... In the first place, as is common ground – and must be so in the light of the authorities to which I have referred – the scope of a 'reasonable excuse' for the purposes of section 7(6) will always be a question of fact for the court on the evidence before it. Subsection (6) does not prescribe the ambit of a 'reasonable excuse', nor does it preclude any particular form of excuse, including an excuse based on the evidence as to the person's physical or mental capacity at the relevant time, which may include evidence as to his intoxication at the time when he was required to provide a specimen of breath. It is also important to keep in mind, however, that there is a real difference between a true explanation for a person's failure to provide a specimen of breath when required to do so and a 'reasonable excuse' for that failure. An explanation may constitute an excuse, and that excuse may be a reasonable one. But that is not necessarily so. The fact that voluntary intoxication may sometimes, perhaps often, explain a person's inability to provide a specimen does not mean that that person will therefore have a 'reasonable excuse' for not doing so.

Secondly however, it is important to distinguish between, on the one hand, the concept of 'medical reasons' in section 7(3) and, on the other, the concept of a 'reasonable excuse' in section 7(6). The two concepts are not the same, nor should they be confused. The judgment required of a constable under section 7(3)(a) as to whether there are 'medical reasons' why a specimen of breath cannot be provided, or should not be required, is a different exercise from that involved in a court's exercise of judgment, on the evidence before it, as to whether the reason for the failure to provide a specimen of breath was such as to constitute, in the circumstances, a 'reasonable excuse'. As this court's decision in *DPP v Beech* illustrates quite vividly, albeit on facts not identical to those of the present case, where the court is concerned with the question of whether or not a defendant's excuse for not providing a specimen required of him is a 'reasonable excuse', it must recognize the object and purpose of the 1988 Act, and must gauge whether, in view of that object and purpose, the excuse put forward can properly be regarded as reasonable. That is necessarily an objective exercise for the court, to be conducted, as was held in *DPP v Beech*, in the light of the evidence as to the defendant's level of intoxication, and, as will usually be so, the fact that his or her intoxication is self-induced. It might reasonably be thought unattractive, to say the least, that a defendant whose self-induced intoxication was so great as to prevent him from understanding the requirement to provide a specimen or, as in this case, to render him physically incapable of providing that specimen, could take advantage of a statutory defence not available to a defendant whose conduct had been

objectively more 'reasonable' in that his level of intoxication when he drove a motor vehicle on the highway was not such as to render him incapable of providing a specimen of breath. This would seem an unlikely concept for Parliament to have embraced in enacting the defence of 'reasonable excuse' for a defendant's failure or refusal to provide the specimen required.

Thirdly, in my view, it is not an answer to that last proposition to point to the alternative procedure for the provision of a specimen of blood or urine in accordance with section 7(1)(a), (3), (4) and (5). That the police are given an alternative method of obtaining a relevant specimen, whether of blood or urine, does not of itself render reasonable a defendant's failure or refusal to provide a specimen of breath where such failure or refusal is based on, or sought to be justified by, his own self-induced intoxication. There is no logical connection between the two.

Fourthly, this analysis is, I believe, entirely congruent with that consistently applied in the cases concerning the concept of 'reasonable excuse' for the purposes of section 7(6), to some of which I have referred. And it is not incompatible with the approach adopted in the cases where this court or the Court of Appeal has had to consider the concept of 'medical reasons' for the purposes of section 7(3). In particular, in my view, it aligns perfectly well the decision of the Court of Appeal in *Young v DPP*. In that case the court was concerned with a different question, which was whether, for the purposes of section 7(3)(a), the defendant's intoxication was capable of amounting to a 'medical reason' justifying a decision that a specimen of blood should be required instead of a specimen of breath. That is, both in substance and in consequence, a different decision from that with which we are concerned here. Crucially, there is nothing in *Young v DPP* to disturb the conclusion that, on the particular facts of a case, a 'reasonable excuse' for the purposes of section 7(6) may not be available even if there are cogent 'medical reasons' under section 7(3) to justify adopting the alternative procedure for requiring a specimen of blood under section 7(3).... The district judge's error, as I see it, lay in the conclusion he reached having regard to the respondent's intoxication – that the respondent was, as he put it, 'simply too drunk to provide'. He appears to have directed himself, in the light of the Court of Appeal's decision in *R. v Lennard*, that because a 'reasonable excuse' must arise from 'a physical or mental inability to provide' the specimen required, it follows that 'a physical or mental inability to provide' must necessarily be regarded as an excuse that is 'reasonable'. That is not so. To qualify as a 'reasonable excuse', the proffered excuse must be, in the circumstances, inherently 'reasonable'. And, on the face of it at least, the evidence before the district judge, and in particular the evidence of the respondent's level of intoxication and the absence of any particular feature in the evidence that might have sustained a defence of "reasonable excuse", left it open to him to conclude that that defence was not available here – because in the circumstances the excuse was not a 'reasonable' one.... In the circumstances of this case, once the respondent had failed to provide a specimen of breath, it was open to the officers to take the view that an offence under section 7(6) had been committed and that he should be charged with that offence. They were entitled to abandon the procedure for obtaining a specimen of breath when they did, and there was nothing in section 7, or elsewhere in the 1988 Act, to compel them to proceed to require a specimen of blood or urine. The notion that this was to leave the procedure provided for under section 7 incomplete is misconceived. The officers were not bound to continue with the alternative procedure provided for

under section 7(1)(b) and (3). That they could have done this is not to say that they should. They were not under a duty to do so."—*Director of Public Prosecutions v Camp* [2017] EWHC 3119 (Admin).

REASONABLE TIME. "The expression 'reasonable time' is one which takes its meaning from its context and requires to be qualified, in my view, by the words 'in the circumstances'."—*MacKie, Re Judicial Review* [2016] ScotCS CSOH 125.

REASONABLY INCURRED. "The costs judge is required to consider whether the costs have been 'reasonably incurred'. The proper approach to this question was set out in *Wraith v Sheffield Forgemasters Ltd* [1998] 1 WLR 132 which approved the dicta by Potter J. set out and reported at [1996] 1 WLR 617 at 624-625. The focus is primarily upon the reasonable interests of the claimant so one looks to see whether a reasonable choice or decision has been made by a reasonably minded claimant. In *Surrey v Barnet & Chase Farm Hospitals NHS Trust* [2018] EWCA Civ 451; [2018] 1 WLR 5831 at paragraph 32 Lewison LJ made it clear that the issue is 'was the decision, which in this case was to switch from public funding to a CFA, a reasonable one'. It is for the claimant to justify his change of funding method. This is not answered by a generic high level assessment of the pros and cons of each funding method. If a party has not received sound advice it may compromise the reasonableness of the choice to change funding. As was made clear in *Solutia UK Ltd v Griffiths* [2002] PIQR P16 at paragraph 16 'it is clear that the test must involve an objective element when determining the reasonableness or otherwise of instructing the particular legal advisers in question, none the less that must always be a question which is answered within the context of the particular circumstances of the particular litigants with which the court is concerned'."—*AB v Mid Cheshire Hospitals NHS Foundation Trust* [2019] EWHC 1889 (QB).

REBUILD. "First, the concept of 'conversion' is found in the overarching provisions of Class Q (not in Q.1) and it thereby introduces a discrete threshold issue such that if a development does not amount to a 'conversion' then it fails at the first hurdle and there is no need to delve into the exceptions in Q.1. It is thus a freestanding requirement that must be met irrespective of anything in Q.1. Mr Campbell responded to this by saying that Class Q must be read as a whole (including therefore Q.1) and read as such it provides a comprehensive definition of 'convert'. This was made up of (i) the requirement in Q that the starting point be an 'agricultural building' and the end point be a 'dwelling'; and (ii) the requirement in paragraph [105] NPPG that the existing building be sufficiently load-bearing. The requirement in Q.1(i) that the works be no more than 'reasonably necessary for the building to function as a dwelling house' was inherent in the first condition, i.e. the definition of a dwelling. It was argued that provided these conditions were met there was no more that was needed to be assessed by a decision maker in order to come to the conclusion that the works amounted to a conversion. The difficulty with this argument is that, on a fair construction of the drafting logic of the Order, the requirement that development amount to a 'conversion' is drafted as a separate requirement from these other conditions. In particular (as set out in the second point below) the concept of conversion has inherent limits which delineate it from a rebuild. Second, a conversion is conceptually different to a 'rebuild' with (at the risk of being over simplistic) the latter starting where the former finishes. Mr Campbell, for the Claimant, accepted that there was, as the Inspector found, a logical distinction between a conversion and a rebuild. As such he acknowledged that since Class Q referred to the concept of a

conversion then it necessarily excluded rebuilds. To overcome this Mr Campbell argued that a 'rebuild' was limited to the development that occurred following a demolition and that it therefore did not apply to the present case which did not involve total demolition. In my view whilst I accept that a development following a demolition is a rebuild, I do not accept that this is where the divide lies. In my view it is a matter of legitimate planning judgment as to where the line is drawn. The test is one of substance, and not form based upon a supposed but ultimately artificial clear bright line drawn at the point of demolition. And nor is it inherent in 'agricultural building'. There will be numerous instances where the starting point (the 'agricultural building') might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild. In fact a more apt term than 'rebuild', which also encapsulates what the Inspector had in mind, might be 'fresh build' since rebuild seems to assume that the existing building is being 're' built in some way. In any event the nub of the point being made by the Inspector, in my view correctly, was that the works went a very long way beyond what might sensibly or reasonably be described as a conversion. The development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building. I should add that the position of the Claimant was that the challenge was as to law; if the argument in law was lost (and the Inspector did not therefore misdirect herself) then it was not argued that the Inspector acted irrationally in coming to the conclusion that the works were a rebuild/fresh build, and not a conversion. Third, in relation to the argument that the conversion/ rebuild distinctions is flawed because it is not defined and, in any event, interpreted in its normal dictionary sense covers the works in issue, there is in my judgment no need for the concept formally to be defined and the lack of a definition is not an indication that the concept lacks substantive meaning or content. The Order is directed towards a professional audience and the persons who have to make an assessment of whether works amounted to a conversion are experts, such as inspectors, who are well able to understand what the term means in a planning context (see by analogy *Bloor Homes v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) at paragraph [19(4)] in relation to policy guidance). The concept of 'conversion' must also be understood in its specific planning context. It is not a term that can be plucked without more directly from a dictionary. Indeed, Mr Campbell acknowledged the logic, in the planning context, of the distinction between a rebuild and a conversion."—*Hibbitt v Secretary of State for Communities & Local Government* [2016] EWHC 2853 (Admin).

RECEIVED IN THE EXECUTION OF DUTY. "Both Counsel referred me to a large number of authorities which had a bearing on the meaning of 'received in the execution of duty' and the nature of the causation test which it involves. In reality, there was no difference between the parties on the principles to be distilled from the authorities, although each sought to emphasise different points along the way. The core principles are set out in *Regina (Stunt) v Mallett* where the Court of Appeal approved the approach taken by Richards J in *R v Kellam, Ex Parte South Wales Police Authority* [2000] ICR 632. I summarise them below: a. The test is whether the person's injury is directly and causally connected with his service as a police officer. The causation test is not to be applied in an overly legalistic way as it is a relatively straightforward concept and one which falls to be applied in practice by medical rather than legal experts. The reference to a direct causal link does not therefore mean that

fine distinctions are to be drawn between direct and indirect causes of the injury but there must be a substantial causal connection between the injury and the person's service as a police officer. b. The causal connection must be with person's service as a police office, not simply with his being a police officer. In this context, duty is not to be given a narrow meaning. It relates not just to operational police duties but to all aspects of the officer's work and to the officer's work circumstances. A sufficient causal connection may be established with events experienced by the officer at work, whether inside or outside the police station and including such matters as things said or done to him by colleagues at work. It is not necessary to establish that work events or work circumstances are the sole cause of the injury provided that there is a substantial causal connection. c. The 'one common element' in each case in which the injury was held to have been sustained in execution of duty as the existence of an event or events, conditions or circumstances which impacted directly on the physical or mental condition of the claimant while he was carrying out his duties which caused or substantially contributed to physical or mental disablement (per MR at [56])."—*Chief Constable of Avon And Somerset Constabulary v Police Medical Appeal Board* [2019] EWHC 557 (Admin).

RECOGNISE. "The word 'recognise' in the consent order and standard 10(e) is highly ambiguous. The *Oxford English Dictionary* supplies the more usual idiomatic meaning of the verb as 'to acknowledge, consider, or accept (a person or thing) as or to be something'. However, it also supplies the more legalistic meaning, namely 'to accept the authority, validity, or legitimacy of; esp. to accept the claim or title of (a person or group of people) to be valid or true'. When a lawyer talks about someone 'recognising' a foreign judgment he means accepting that judgment as valid, binding and enforceable against that person. This is certainly the sense in which recognition of foreign judgments is used at common law. It is the sense in which the concept is used in the Civil Jurisdiction and Judgments Act 1982, as well as in the original and revised Brussels Regulations (Nos. 44/2001 and 1215/2012) and in the original and revised Brussels II Regulations (Nos. 1347/2000 and 2201/2003). It is the sense in which Sir James Munby P considered an informal Indian adoption in the very recent case of *Re N* [2016] EWHC 3085 (Fam). When he says at [149] 'English law recognises N's Indian adoption by the applicant in October 2011' he does not mean that English law merely has regard to the Indian adoption. He means that the court accepts the adoption as valid and effective to alter N's legal status."—*Mandic-Bozic, R. (on the application of) v British Association for Counselling and Psychotherapy* [2016] EWHC 3134 (Admin).

RECORDS OF THE COURT. "The 'records of the court' are essentially documents kept by the court office as a record of the proceedings, many of which will be of a formal nature. The principal documents which are likely to fall within that description are those set out in paragraph 4.2A of CPR 5APD.4, together with 'communication between the court and a party or another person', as CPR 5.4C(2) makes clear. In some cases there will documents held by the court office additional to those listed in paragraph 4.2A of CPR 5APD.4, but they will only be 'records of the court' if they are of an analogous nature. This will include a list of documents, but not the disclosed documents themselves. It may include witness statements and exhibits filed in relation to an application notice or Part 8 proceedings (see CPR 8.5), but not usually witness statements or expert reports exchanged by the parties in relation to a trial. Such statements and reports are not generally required to be filed with the court

and they will typically be provided to the court only as part of the trial bundles. The receipt document for the trial bundles may be a record of the court, but not the trial bundles themselves. Trial bundles cannot be regarded as being part of the 'records of the court' for a number of reasons in addition to those given by CIH as summarised above and in particular: (1) Trial bundles are provided for the judge. They are for the judge to use, mark, annotate, re-order or edit as he or she thinks fit. In so doing, no judge would consider that they were adulterating 'records of the court'. (2) Trial bundles may pass through the court office en route to the judge, but the court office has no interest in or role in relation to trial bundles, other than acknowledgment of their receipt. (3) Trial bundles are routinely destroyed by the judge or (if applicable) his/her clerk after the conclusion of proceedings. This would not be appropriate if they were 'records of the court'. But nor, often, would it be appropriate to return the judge's bundles, not least because they are likely to contain comments and annotations. Whilst redaction of comments/annotations might be possible that would probably have to be carried out by the judge or his/her clerk and would in any event reveal the fact of comment/annotation. In many cases there would therefore need to be the creation of a new set of unmarked trial bundles. (4) Trial bundles are not stored in the court office, nor are they only taken out of the office with the permission of the court, as CPR 5APD5.5 requires. (5) The administrative burden for the court office storing trial bundles would be enormous, particularly if they had to be retained as 'records of the court' even after the conclusion of proceedings. Trial bundles routinely run to thousands of pages and multiple bundles. In heavy commercial litigation, for example, there will often be over 100 files of trial documents. (6) The procedure for obtaining copies of documents from the 'records of the court' involves the court office taking and providing copies. Such a procedure clearly contemplates a limited copying exercise. It cannot have been intended that court officers would have to copy thousands of documents, as would be the case with many trial bundles. (7) The application for permission for copies to be obtained requires 'the document or class of document' to be identified – CPR 5APD4.3. A trial bundle is not a 'document or class of document'."—*Cape Intermediate Holdings Ltd v Dring (Asbestos Victims Support Group)* [2018] EWCA Civ 1795.

RECOVER. "'Recover' suggested, I agree, that the expenditure had taken place. The *Oxford English Dictionary*, over several pages, revealed that the flexibilities of the English language tended somewhat in his favour, but without being conclusive. 'Recover' has also been used to mean 'obtaining … judgment' making a sum or debt payable; *Morris v Duncan* [1899] 1 QB 4, to which Mr Gordon referred me. More importantly: was this heading of any weight? *Bennion on Statutory Interpretation* 6th ed at section 256 said that the heading to a section may be considered, but account had to be taken of the fact 'that its function is merely to serve as a brief, and therefore possibly inaccurate, guide to the content of the section.' So the heading helps Mr Herberg, but not much. The limitations of reliance on headings were illustrated by the use of 'recovery of charges' in the heading to the repealed s18, which applied to pre-payment meters."—*UK Power Networks (Operations) Ltd, R. (on the application of) Gas and Electricity Markets Authority* [2017] EWHC 1175 (Admin).

RECREATION. "I agree with Ms Wakefield that, to come within sub-paragraph (v), the facilities must be wholly or mainly for recreation. I would accept that a facility which is wholly or mainly for recreation is not disqualified because some necessary ancillary activity will also be carried on there. Thus an indoor recreational facility for

children does not become disqualified under sub-paragraph (v) because it is pointed out that children learn through play, and that the children are thereby being provided with a form of education. The purpose of the facility remains wholly or mainly recreational. It is not enough, however, that recreation occurs or may occur within the facility. So to construe Article 7(1) would give the local authority free rein to provide any service to the public by means of an indoor facility in an open space provided they included a play area within the facility."—*R. (on the application of Muir) v Wandsworth BC* [2018] EWCA Civ 1035.

RECREATIONAL ACTIVITIES. "All these illustrations of recreational activities are consistent with the dictionary definition of recreation which is a means of refreshing or enlivening the mind or spirits by some pleasant occupation, pastime or amusement. The word originates from the Latin verb recreare meaning to refresh, restore, make anew, revive, invigorate. The Council submitted that the term 'recreation' had a broad meaning and the breadth of meaning was reinforced in sub-paragraph (v) by the addition of the words 'any form of recreation whatsoever'. I accept this submission."—*Muir, R (On the Application Of) v Wandsworth Borough Council* [2017] EWHC 1947 (Admin).

REFLECTS. "As already indicated, this turns on the use of the word 'reflect' in Article 6 of the 2010 Direction. As a matter of language it has a variety of meanings. A mirror reflects light by throwing it back without absorbing it. One can reflect on a problem by giving it careful thought and consideration. The judge thought that it meant something like reproduce or represent. Mr Fordham QC who appears for Vodafone, one of the interested parties, says that it should be read as meaning 'set by reference to' or 'based on'. Mr Saini QC for Ofcom accepts that if this or something equivalent is the correct meaning then his client has misinterpreted Article 6 of the 2010 Direction and will need to reconsider the licence fees it has set.... There is nothing in Ofcom's own consultation documents to indicate that its use of the word 'reflect' was intended to exclude the Article 8 considerations as a material factor in the setting of licence fees. AIP would be based on an assessment of the opportunity cost provided by the liberalised bands of spectrum but it would still be necessary for Ofcom to consider other regulatory factors in deciding how to apply its calculation of AIP when determining the level of fees.... The use of the term 'reflect' is not confined to Ofcom. The word is used in Article 13 of the Authorisation Directive (see [9] above) the French text of which uses the verb 'tenir compte' (take account of). It also features in the Impact Assessment published by the Secretary of State in connection with the making of the 2010 Direction which I deal with in [27]-[28] above. That recognises that Ofcom could still set revised licence fees 'to reflect the full economic value' and therefore reproduces the definition of AIP adopted by Ofcom in its own policy statement. It is, I think, therefore difficult to read Article 6 as anything but the adoption of the same definition of AIP using "reflect" in the same sense. The judge was, I think, wrong insofar as he held that 'reflect' should be given a different meaning."—*EE Ltd v Office of Communications* [2017] EWCA Civ 1873.

REFOULEMENT. "The expression 'refoulement' refers to a principle which condemns the rendering of a victim of persecution to his or her persecutor. Generally, the persecutor in question is a state actor. The principle that a person should not be refouled is a fundamental tenet of international law relating to refugees which protects

them from being returned or expelled to places where their lives or freedoms may be threatened."—*Ibrahimi v Secretary of State for the Home Department* [2016] EWHC 2049 (Admin).

REFURBISHMENT. Stat. Def., Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 Sch.14 para.9(1)(h).

REGARD. See DUE REGARD.

REGISTRAR OF THE PROVINCE OF CANTERBURY. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.28.

REGISTRAR OF THE PROVINCE OF YORK. Stat. Def., Ecclesiastical Jurisdiction and Care of Churches Measure 2018 s.28.

REGULARLY. "This case is all about the meaning of the word 'regularly' when describing the attendance of a child at school. Under section 444(1) of the Education Act 1996, if a child of compulsory school age 'fails to attend regularly' at the school where he is a registered pupil, his parent is guilty of an offence. There are at least three possible meanings of 'regularly' in that provision: (a) evenly spaced, as in 'he attends Church regularly every Sunday'; (b) sufficiently often, as in 'he attends Church regularly, almost every week'; or (c) in accordance with the rules, as in 'he attends Church when he is required to do so'. When does a pupil fail to attend school regularly? Is it sufficient if she turns up regularly every Wednesday, or if she attends over 90% of the days when she is required to do so, or does she have to attend on every day when she is required to do so, unless she has permission to be absent or some other recognised excuse?... In accordance with the rules 42. All the reasons why 'sufficiently frequently' cannot be right also point towards this being the correct interpretation. The Divisional Court was clearly worried about the consequence that a single missed attendance without leave or unavoidable cause could lead to criminal liability. However, there are several answers to this... This interpretation is also consistent with the provision in section 444(3)(a) and (9) that a child is not to be taken to have failed to attend regularly if he is absent with the leave of a person authorised by the governing body or proprietor of the school to give it. Unlike sickness or unavoidable cause, leave is not a defence. It is part of the definition of the offence. Your child is required to attend in accordance with the normal rules laid down by the school authorities for attendance but the school can make an exception in your case. As noted above, it is also consistent with section 444(3)(b).

47. There is another pointer in the link between the parent's obligation in section 7, to cause the child to receive 'full-time' education, and the offence committed under section 444(1), if the child fails to attend school regularly. 'Full-time' indicates for the whole of the time when education is being offered to children like the child in question.... I conclude, therefore, that in section 444(1) of the Education Act 1996, 'regularly' means 'in accordance with the rules prescribed by the school'. I would therefore make a declaration to that effect. To the extent that earlier cases, in particular *Crump v Gilmore* and *London Borough of Bromley v C*, adopted a different interpretation, they should not be followed."—*Isle of Wight Council v Platt* [2017] UKSC 28.

RELATIVE. Stat. Def. ("means spouse or civil partner, brother, sister, ancestor or lineal descendant"), Terrorism Act 2000 s.59B, inserted by Counter-Terrorism and Border Security Act 2019 s.4.

REMUNERATION. "As will be seen, 'consideration' in article 2 means only some value given to the supplier in return for the goods or services by the person to whom

they are supplied. It is this amount on which VAT is payable. It need not be full value or indeed bear any particular relation to the value of the goods or services supplied. By contrast, 'remuneration' has a broader meaning, and may be said to encapsulate the concept of carrying on an economic activity 'for the purposes of obtaining income therefrom on a continuing basis'. Those words appear in article 9(1) as qualifying only the exploitation of tangible or intangible property, but it is established that they apply generally to 'economic activity': *Landesantalt für Landwirtschaft v Götz* (Case C-408/06) [2007] ECR I-11295 at [18], Finland at [37]. It can readily be appreciated that goods or services may be supplied for 'consideration' without the supplier doing so as an economic activity or for 'remuneration'."—*Wakefield College v Revenue And Customs* [2018] EWCA Civ 952.

RENT DUE. "The meaning of 'rent due' in the context of Case D, AHA 1986 is not subject to any binding authority in the courts of England and Wales. However, in the Scottish case of Alexander, the meaning of 'rent due' was considered in the context of the equivalent Scottish statutory provision, section 22(2)(d) of the Agricultural Holdings (Scotland) Act 1991, which is same for these purposes. In Alexander, Lord Gill held (at paragraphs 11M-12A): '...the starting point is that before the landlord can serve a valid demand to pay, the rent must be due... In my opinion, rent is not due if a tenant is entitled to retain it. A sum of money can be said to be due only if the debtor is under an enforceable obligation to pay it. The logic behind the service of a statutory demand to pay a sum of rent is that, at the date of the demand, the landlord is entitled to recover that sum by legal proceedings if it is not paid. If the landlord is in material breach of his obligations, his claim for rent is not liquid... In such a case the tenant is not obliged to pay... Therefore, in my view, the rent cannot be said to be due.' Lord Gill then went on (at paragraph 12M) to find support in the judgment of Balcombe LJ in *Sloan Stanley Estate Trustees v Barribal* [1994] 2 EGLR 8, a Court of Appeal case regarding a Case D notice to quit. In *Sloan Stanley*, the issue for the court was whether a tenant was entitled to set-off a contingent liability to pay the landlord's drainage rate, to reduce the amount of 'rent due' stated in the notice to quit. On the facts, the tenant failed in asserting equitable set-off because the liability was contingent; he had not actually paid the drainage rate and therefore there were no sums to set-off. However, Balcombe LJ expressed the view obiter that, in the Case D context, it is possible to rely on equitable set-off against rent if the tenant has an existing debt 'or at least a claim which sounds in possibly unliquidated damages' (paragraph 11J-K). Commenting on *Sloan Stanley*, Lord Gill noted that: 'That dictum raises specialities of English law, but it is plainly incompatible with the idea that, whatever the circumstances, the landlord is entitled to serve a demand under section 22(2)(d) for the rent payable under the lease whenever the date of payment has come and gone... In my view, the sheriff principal should have held that while the landlord was in material breach of his obligations to renew, he was not entitled to enforce the tenant's performance of his obligations to repair, and, accordingly, that the demand to remedy was not one that the landlord was entitled to serve.' These two cases support the proposition that the landlord ought not to be entitled to claim sums as rent due under the statutory procedure if he or she would not be entitled to recover such sums by way of legal proceedings. Applied to this case it would follow that the amount of rent due stated in a Case D notice to pay should be reduced by any sums which the landlord could not take legal action to recover. . . . At paragraph 49 of the judgment, the Recorder set out three criteria necessary for equitable set-off to apply. These were derived from the case

of *Fearns v Anglo-Dutch Paint and Chemical Co Ltd* [2010] EWHC 2366 (Ch). In summary: i) the set-off must be properly asserted (at 21 and 30); ii) it must be quantified (at 27 to 30); and iii) the assertion and quantification must be made reasonably and in good faith (at 21 and 30). The criteria in Fearns draw on the judgment of Lord Denning MR in *Federal Commerce & Navigation Co Ltd v Molena Alpha Inc* [1978] QB 927 regarding quantification of set-off. Lord Denning MR held that if a charter party 'quantifies his loss by a reasonable assessment made in good faith – and deducts the sums quantified – then he is not at fault'. Although Goff J dissented, concluding that it should be open to the charterer to assert the claim as 'an immediate answer to the liability to pay' 'before ascertainment', Lord Denning MR's view has since been adopted as the preferred one (in *SL Sethia Liners Ltd v Naviagro Maritime Coprn (The Kostas Melas)* [1981] 1 Lloyd's Rep 18; and *Santiren Shipping Ltd v Unimarine SA (The Chrysovalandou-Dyo)* [1981] 1 All ER 340). Accordingly, in my view, the Recorder was correct to adopt the limiting criteria from Fearns and apply them to the availability of equitable set-off in the context of 'rent due' under Case D."—*The Secretary of State for Defence v Spencer* [2019] EWHC 1526 (Ch).

RENTAL PERIOD. "We do not accept that a 'rental period' is synonymous with 'term' or 'duration'. We consider that in its everyday use this expression is understood to relate to the period in respect of which instalments of rent are due."—*Falkirk Council v Gillies* [2016] ScotCS CSIH 90.

REPAIR. "This is an application for judicial review concerning the construction of the word 'repair' in an enforcement order (EN) issued by a planning authority against a developer who was in breach of planning regulations.... Words have meanings in their context. The meaning of even a familiar word will vary according to when it is used. In the context of a notice requiring the claimant to remedy a breach of planning regulations what repairs are necessary will depend on the extent of the breach. In this case the entirety of the walls concerned had been rendered and painted and so any repair could well encompass them entirely.... the District Judge made no error in finding that 'Repair' encompassed rebuilding two walls, if necessary."—*Hargrave House Ltd and Chaim Reiner v Highbury Corner Magistrates Court* [2018] EWHC 279 (Admin).

REPATRIATION. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

REPAY. "78. The argument for the Lead Claimants is based primarily on the structure and wording of section 80. They point out that subsections (1) to (6) are concerned with the crediting or repayment of undue VAT to the supplier, not the consumer. In subsection (7), the words 'credit or repay' echo the language of earlier subsections, where they can plainly refer only to the repayment or crediting of the supplier. They submit that subsection (7) is similarly concerned with the supplier. Only a supplier of goods or services can 'account' for an amount to the Commissioners, and only a supplier can be 'credited' with an amount by them. Similarly, only a supplier can be 'repaid' by the Commissioners, since only he has paid them in the first place. Section 80(7) is thus designed only to exclude claims, otherwise than under the section, by persons who have a claim under the section. That argument was accepted by the Court of Appeal.

79. On behalf of the Commissioners, it is argued that the word 'repay' is capable of applying to any payment back by the Commissioners of VAT which they have received. From their perspective, there is a repayment if the VAT is refunded, whether

to the supplier or to someone else. Furthermore, it is argued, it would be strange if section 80(7) barred a restitutionary claim by the supplier, but left the supplier's customer in a better position. Moreover, it is argued, section 80 establishes a statutory scheme for the restitution of VAT which was not due, which by necessary implication excludes non-statutory restitutionary claims. The argument seeks to draw support from the decision of the Court of Appeal in *Monro v Revenue and Customs Comrs* [2008] EWCA Civ 306; [2009] Ch 69, where a common law claim was held to be excluded by a statutory scheme for the recovery of tax, since it would be inconsistent with the purpose of the scheme.

80. In agreement with the judge, I find the textual arguments inconclusive, when considered by themselves. The word 'repay' is capable of bearing a wider meaning than the one for which the claimants contend, but could also be construed more narrowly. A purposive construction of the provision points more clearly to the correct conclusion. In that regard, section 80(3) and (4) are particularly important."—*Revenue and Customs v Investment Trust Companies* [2017] UKSC 29.

REPLACEMENT. "First, the draftsman has chosen to use the word 'replacement' which does not naturally suggest the selection of an alternative to an option which remains available. It is, nonetheless, capable of bearing that meaning and one must look to the context for guidance."—*Barnardo's v Buckinghamshire* [2018] UKSC 55.

REQUIREMENT. "Accordingly, I accept Mr Milsom's submission on Ms Jagoo's behalf that the meaning of a 'requirement' is those hours which a person must perform in order to meet the requirements of the course. Since the course itself will have been designed by the educational establishment, I further consider that to describe that as a requirement 'by the educational establishment' gives effect to a rational and workable objective without undue strain on the natural meaning of the words. I do not, therefore, accept that there is a bright-line difference between a 'requirement' and a 'recommendation' as held in previous cases at first instance (see, for example, *R (Hakeem) v Enfield LBC* [2013] EWHC 1026 (Admin)) and by the judge in the present case."—*Jagoo v Bristol City Council* [2019] EWCA Civ 19.

RESERVED LEGAL ACTIVITY. "The issue raised on this appeal is essentially one of civil procedure, albeit involving issues of statutory interpretation. It comes to this. Is service of a claim form a reserved legal activity for the purposes of the Legal Services Act 2007 (the 2007 Act)? And if it is, does service of a claim form where carried out by a person who is not an authorised or exempt person for the purposes of the 2007 Act have the consequence that service is invalid and that the claim should be struck out? . . . There being no authoritative guidance on this, as the judge below rightly found, one then is left with the definition of 'conduct of litigation' contained in paragraph 4 of Schedule 2 to the 2007 Act. And on this aspect I am in no real doubt that the judge was correct to find that service of the claim form was within the ambit of 'conduct of litigation.' I am prepared to accept that 'commencement' of proceedings as identified in paragraph 4(1)(b) of Schedule 2 is not to be taken as coextensive with 'issue' of proceedings as identified in paragraph 4 (1)(a). Quite what the intended difference was is not altogether clear: but it may be that it was to mark the fact that some forms of proceedings are not formally commenced by 'issue'. But be that as it may, I consider that service of the claim form is indeed an aspect of 'prosecution... of such proceedings' and at all events that service of the claim form is 'an ancillary function in relation to such proceedings.' . . . The overall conclusion therefore has to be that formal service of a claim form on a defendant falls within the 'conduct of

litigation' for the purpose of the 2007 Act. It is therefore a reserved legal activity which can only be performed by a statutorily authorised person or by an exempt person. And CSD were neither."—*Ndole Assets Ltd v Designer M&E Services UK Ltd* [2018] EWCA Civ 2865.

RESIDENCE. "This appeal raises a narrow but important issue of construction as to the meaning of 'residence' for these purposes. The judge below equated 'residence' with physical presence. The Appellants contend that he was wrong to do so because, in determining residence, other factors such as owning property, maintaining a home, paying income tax and council tax, and other private and family connections are relevant and must be taken into account.... In my view, Judge Allen was right to equate 'residence' in paragraph 245AAA with 'physical presence', for the following reasons.... In his submissions, Mr Byass referred us to the Oxford English Dictionary definition of 'residence', namely 'the fact of living in a particular place'. However, it has long been established that residence is used in different statutes with different meanings, so that (e.g.) that which constitutes residence for company registration purposes does not necessarily amount to residence for the purposes of income tax (see, e.g., *Goerz & Co v Bell* [1904] 2 KB 136). Reference to the use of the word in other legal contexts is therefore of no assistance – nor did either Ms Weston nor Mr Byass suggest that it is. 'Residence' in paragraph 245AAA has to be construed in its own context within the Rules. In that context, I consider the meaning of the word plain. First, it has to be seen in the context of paragraph 245CD, in respect of which it is a definition provision. The relevant requirement in paragraph 245CD at the relevant time (i.e. the date the Secretary of State made the challenged decision: 13 January 2016) was that 'the applicant must have spent a continuous period [of 5 years] lawfully in the UK...'. Paragraph 245AAA defines 'continuous period of 5 years lawfully in the UK': it does not seek to define, or interfere with, the word 'spent'. The construction urged by Ms Weston seeks to redefine the phrase in paragraph 245CD as 'the applicant must have resided for a continuous period [of 5 years] lawfully in the UK...'. That manipulation of paragraph 245CD is, in my view, unwarranted. The whole of the language in both paragraph 245CD and paragraph 245AAA is written in the terms of physical presence in the UK. For example, both paragraphs are concerned with 'a continuous period', and what might break such continuity namely 'absence' (i.e. physical absence) from the UK. The antithesis of physical absence is physical presence. The reference to 'continuous period' in the sense of 'residence' urged upon us by Ms Weston would be, at least, odd.... I accept that paragraph 245AAA need not have referred to 'residence' at all: it could simply have referred to 'presence'. However, for the reasons set out above, I consider that the tribunal judge below was correct to equate 'residence' and physical presence. It is not for the court to speculate; but, given that 'residence' had been used by the Secretary of State in earlier guidance as a short-hand for the continuity requirement in paragraph 245CD, it may be that that was simply transposed across by the draftsman. In any event, I consider its meaning, in context, clear."—*Nesiama, R (On the Application Of) v The Secretary of State for the Home Department* [2018] EWCA Civ 1369.

See ORDINARY RESIDENCE.

RESIDENTIAL PREMISES. STAT. DEF., OFFENSIVE WEAPONS ACT 2019, S.3(5).

RESTITUTIONARY. "In my judgment, however, the characterisation of the claim as 'restitutionary' does not mean that the claim made by the Company against the recipient must necessarily be a claim in what used to be called restitution, and is now

called unjust enrichment. It is perhaps better seen as a claim for the 'restitution' (in the old-fashioned sense of 'return') of the property the subject of the disposition which by virtue of section 127 is void in law. So, if the void disposition was one relating to a property right, then the property right has not been transferred to the recipient of the physical asset the subject of that property right, and a claim will lie on behalf of the Company for the return of that asset. For example, if the Company had handed over possession and purported to transfer the ownership of a motorcar to a third party, but the disposition was avoided by section 127, the Company's claim would be for the physical return of the motorcar under the general law of tort, that is, interference with goods."—*Officeserve Technologies Ltd v Annabel's (Berkeley Square) Ltd* [2018] EWHC 2168 (Ch).

RETAIL PRICES INDEX. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

RETAILER. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

RETAINED CASE LAW. Stat. Def., "(a) retained domestic case law, and (b) retained EU case law" (European Union (Withdrawal) Act 2018, s. 6(7)).

RETAINED DIRECT EU LEGISLATION. Stat. Def., "any direct EU legislation which forms part of domestic law by virtue of section 3 (as modified by or under this Act or by other domestic law from time to time, and including any instruments made under it on or after exit day)" (European Union (Withdrawal) Act 2018, s.20(1)).

RETAINED DOMESTIC CASE LAW. Stat. Def., "any principles laid down by, and any decisions of, a court or tribunal in the United Kingdom, as they have effect immediately before exit day and so far as they—

(a) relate to anything to which section 2, 3 or 4 applies, and

(b) are not excluded by section 5 or Schedule 1, (as those principles and decisions are modified by or under this Act or by other domestic law from time to time)" (European Union (Withdrawal) Act 2018 s.6(7)).

RETAINED EU CASE LAW. Stat. Def., "any principles laid down by, and any decisions of, the European Court, as they have effect in EU law immediately before exit day and so far as they—

(a) relate to anything to which section 2, 3 or 4 applies, and

(b) are not excluded by section 5 or Schedule 1, (as those principles and decisions are modified by or under this Act or by other domestic law from time to time)" (European Union (Withdrawal) Act 2018 s.6(7)).

RETAINED EU LAW. Stat. Def., "anything which, on or after exit day, continues to be, or forms part of, domestic law by virtue of section 2, 3 or 4 or subsection (3) or (6) above (as that body of law is added to or otherwise modified by or under this Act or by other domestic law from time to time)" (European Union (Withdrawal) Act 2018 s.6(7)).

RETAINED GENERAL PRINCIPLES OF EU LAW. Stat. Def., "the general principles of EU law, as they have effect in EU law immediately before exit day and so far as they—

(a) relate to anything to which section 2, 3 or 4 applies, and

(b) are not excluded by section 5 or Schedule 1,

(as those principles are modified by or under this Act or by other domestic law from time to time)" (European Union (Withdrawal) Act 2018 s.6(7)).

RETROSPECTIVE PROVISION. Stat. Def., "in relation to provision made by regulations, means provision taking effect from a date earlier than the date on which the regulations are made" (European Union (Withdrawal) Act 2018 s.20(1)).

RETURN. "Next, issue (iii): Can the copy be returned? It is not easy to conceptualise how copied data that is stored on a third party's server can be 'returned'. Once the storage device has been physically returned to its owner that owner then has the original in its possession and this includes data and documents stored thereupon. If the seizing authority transfers a copy back to the original owner (for instance by emailing it or printing it off and handing it over) then that is no more than an additional act of copying of the copy and the consequential sending of the copy to the person who already holds the original. In either event the seizing authority still retains on its computer a copy of the document. In normal parlance the 'return' of an item of property necessarily serves to deprive the returning party of any vestige of possession. If a seized vehicle is returned the police are no longer in possession of the vehicle or any vestige of it. But that is not so in relation to copied data held on computer devices.... Pulling the threads together if the copied data is properly to be considered 'seized property' then it seems to me that it was Parliament's intent that it should, at least in principle, also be capable of being returned. How can this be achieved through the wording of section 50ff CJPA 2001? In my view, once again applying a purposive construction of the Act, there are two ways to resolve this issue. First, 'return' may be construed as including within it the idea that no trace or residue of the returned property is to be left with the authority who is returning it. As such the only way in which copied data can be returned is by (a) restoration of the device in which the data is stored and (b) destruction of the copy (the trace). True it is that 'return' does not naturally or easily also embrace destruction. But, nonetheless, this construction accords with Parliament's intent and achieves the 'practical justice' that the Court in *A v CCC* (ibid) identified as the interpretative lodestar. Second, I would also endorse the suggestion made by Mr Marshall QC in argument that the question of removal or destruction can be addressed by the Crown Court under section 59(5) CJPA 2001 (see paragraph [47] above) which applies '... where anything has been seized in exercise, or purported exercise, of a relevant power of seizure'. Any person with a 'relevant interest' in the seized property may apply to the Court for the return of the whole or a part of the seized property on the grounds set out in sub-section (3). Further, on such an application the Court has a power ('may') to 'give such directions as the authority thinks fit as to the examination, retention, separation or return of the whole or any part of the seized property.' Mr Marshall QC argued that the phrase 'retention' was apt to cover non-retention. If a Court directs that an Authority be not allowed to retain copied data, then the only way in which that direction could be complied with would be through destruction or removal by deletion. I see the force in this. Directions relating to 'examination, retention, separation or return' could take many forms, such as (non-exhaustively) directing non-retention (by deletion or removal), or non-inspection by requiring the Authority to retain the data but ring-fence it from examination by the Authority without the consent of the Court, etc. I therefore agree that there is power under section 59 for a Court to order deletion of copied material. In my view construing the Act to confer this power on the Court is consistent with Parliament's intent that a careful balance is to be struck between the ability of investigators to investigate in the public interest and the right of individuals to be safeguarded against the exercise of intrusive powers. The phrase 'retention' in section 59(5) CJPA 2001

covers the situation that arises if property is seized which is found to fall outside the scope of the warrant but is, nonetheless, property which could have been seized for instance because it is relevant to the ongoing investigation. Under section 59(7)(a) CJPA 2001 express provision is made for the Court to sanction the retention of such material in such circumstances so it is therefore logical that section 59(5) would empower the Crown Court to sanction retention. This conclusion is supported by the terms of CPR 47.38 which lays down the procedure for the making of applications under section 59(5). In CPR 47.38(5) an applicant is required to specify in the application why retention '...would be justified on the grounds that, even if it were returned, it would immediately become appropriate for that person to get it back...'. But section 59(5) is not limited to this scenario and I can see no reason why it should not go wider, if justice so requires. I draw support for my conclusion from the pragmatic and purposive approach adopted in previous case law to issues of this sort under both PACE and the CJPA 2001 which extols realism and practicality. Under PACE it has been established that in the framing of a warrant for the search and seizure of computer equipment and mobile phones it is not necessary to specify the items within the computer and mobile phones which were being sought. It had been argued that the police, having identified those items in the warrant, could remove them in paper form or on a memory stick under section 20 PACE or section 50 CJPA 2001 and that therefore there was no justification for allowing warrants to be broadly framed by reference to devices and equipment. In *Faisaltex Ltd* (ibid) Fulford LJ measured this argument against practicalities. He rejected this proposition at paragraph [38]: 'The fact that there may also be material that is irrelevant does not make the computer any less "material" which is likely to be of substantial value to the investigation, as well as likely to be relevant evidence'. In paragraph [40] Fulford LJ referred to the further consideration that the computers (and mobile telephones) would themselves be relevant evidence since investigators would have be interested not only in records relating to the transactions being investigated but also would '.... equally have been concerned to establish the timings, the pattern and the content of any communications between the suspects'. The suggestion that items being sought (eg documents from within the computer memory) could be extracted from the computer on site and then taken away (under sections 19(4) and 20 PACE) was 'unrealistic' and ignored the 'very considerable practical problems' that would confront officers conducting searches on this basis. The power of seizure under section 50 CJPA 2001 did not '...invalidate the act of taking devices of this kind under a warrant ...if there are reasonable grounds for believing that they may contain relevant evidence, albeit they might also contain irrelevant evidence...': Paragraph [43]. It was also observed that where a case involved a 'wide-ranging and broad investigation' it was not easy to see how the search warrant could have been satisfactorily narrowed '...by reference to specific documents, types of documents or other detailed description of the material that was sought...': Paragraph [46]. To similar effect is the judgment in Glenn (ibid). These points were further endorsed and followed in *A v CCC* (ibid) at paragraphs [41] – [44]. In that case the desirability of a construction leading to 'practical justice' was emphasised. I also take comfort in the fact that the Attorney General's Guidelines on Disclosure (2013) in section A27 on retention under the CJPA 2001 of seized material (that followed a section on the categories of material that may and should be retained) states: '...The balance of any digital material should be returned in accordance with sections 53-55 of the CJPA 2001 if seized under that Act'. The assumption is that

residual copied digital material should be returned. Mr Thomas QC, for the Authority, in oral argument was also at pains to explain that the Authority, recognising the intellectual complications inherent in the CJPA 2001, wished to cooperate with persons whose data had been copied to find ways of filleting that material so as reduce it to that which was needed for the purpose of the investigation. I proceed in this judicial review upon the basis that, in principle, the duty of the seizing authority does extend beyond restoration of the physical device and can includes copies of data extracted from seized items of property. This conclusion does not however mean that in every case the Court will necessarily order the 'return' or destruction of copied data. That depends upon the reasonable practicability of the act of separation of the data: see Issue II below."—*Business Energy Solutions Ltd v Crown Court at Preston* [2018] EWHC 1534 (Admin).

RIGHT. See ENTITLEMENT.

RISK. Stat. Def. ("any reasonably identifiable circumstance or event having a potential adverse effect on the security of network and information systems"), Network and Information Systems Regulations 2018 reg.1.

See REAL AND IMMEDIATE RISK.

RISK ASSESSMENT. Stat. Def., Space Industry Act 2018 s.9.

ROAD. Stat. Def. ("means a highway or other road to which the public has access, and includes bridges over which a road passes"), Civil Liability Act 2018 s.1.

ROCKET. Stat. Def. ("a projectile of mainly cylindrical or similar shape that can be propelled from or above the earth by combustion of its fuel (or fuel and oxidant)"), Space Industry Act 2018 s.69.

ROOFING WORKS. "I reject the parties' respective submissions that the phrase 'roofing works' has a single meaning which is either restricted or not restricted to the roof covering as opposed to the structure supporting it. In my opinion the expressions 'roofing' and 'roofing works' are too general to have a single ordinary and natural meaning applicable in all cases where a construction contract requires to be interpreted. The meaning of 'roofing works' in a particular clause of the contract must depend upon context, reading the contract as a whole. In the context of this contract I consider that the defender's interpretation is to be preferred. The best indication of the context in which the words are used seems to me to be the subdivision of the works, and in particular those comprised within the sub-contract works, into work packages. Within WP 2400, one finds in the General Pricing Summary separate prices for preliminaries, structural steelwork, metal decking, roofing, and provisional sums. There is no doubt that the price for roof steel is included within structural steelwork and not roofing. It is not therefore surprising that when one proceeds from the General Pricing Summary to the Pricing Schedule, the items within WP 3600 (in a section entitled 'Cladding/Covering') include roof coverings, but do not include roof steelwork. A similar categorisation can be found in sub-contract document 4100 ('Scope of Works') which includes, within the pursuer's works, WP A2400 (steel frame), WP B2400 (main roof steel) and WP 3600 (roofing to main roof). Again the expression 'roofing' excludes the roof steel."—*Martifer UK Ltd v Lend Lease Construction (EMEA) Ltd* [2016] ScotCS CSOH 66.

RUNNING COUNTY LINES. See CUCKOOING.

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SATISFIED. "A second consideration is the wording of the test itself, and comparison with the wording of other provisions, such as those concerned with orders of an emergency character. In that regard, the most significant terms—'satisfied' and 'likely'—are common to both the Scottish and the English provisions. In particular, as Lord Nicholls observed in *In re H* at pp 585–586, the need for the court to be judicially 'satisfied' is an indication that unresolved doubts and suspicions cannot form the basis of the order, and can be contrasted with the statutory language used where suspicion may be enough (as, for example, in relation to orders under sections 35 and 37 of the Children's Hearings (Scotland) Act 2011). It also indicates that the burden of proof rests on the party seeking the order."—*EV (A Child), Re (Scotland)* [2017] UKSC 15.

SCHOOL. "Is a nursery, attended by young children, a 'school' within the meaning of the General Permitted Development Order ('GPDO')? That is the question of construction posed by these proceedings. . . . There cannot, I think, be any doubt that 'school' in the sense with which I am concerned is an institution for the provision of education. If used without any qualification (compare 'adult school', 'ballet school', 'dog training school') the word means an institution where a general education is provided for young human beings, typically on the basis of attendance at a specified place for a number of hours on a considerable number of days per year. Amongst the other activities taking place in such an institution there will be some that are either not specifically attributable to education (for example the provision of refreshments) or which may be regarded as having a quality that is not solely educational (for example the organisation of games). But the principal purpose needs to be that set out above. A canteen is not a school, even though a school may have a canteen; a chess club is not a school, even though a school may have a chess club. It is also clear that the provision of education does not make an institution a school. 'A ride on an elephant may be educational' (*Re Lopes* [1931 2 Ch 130 at 136-7, per Farwell J), but that does not mean that a zoo is a school. Similarly, museums and concert-halls are not schools; and they do not become schools within the ordinary unqualified meaning of that word by having substantial outreach or educational activities. Further, only limited assistance can be gained from the institution's name. The Vale of York Academy is a School, but the London Hairdressing Apprenticeship Academy is not. Winchester College is a school, but Oriel College is not. As the word is used in the United Kingdom (there is a distinction here from other English-speaking countries, particularly in North America) a university or other institution of tertiary education is not a 'school'. Such institutions may have parts that carry a name using that word with some qualification ('law school', 'school of cosmetology') but the ordinary use of the word 'school' does not comprise institutions whose object is the education or training of people above the age of about 18. One may use phrases such as 'schools and colleges' or 'schools and universities' without being suspected of tautology. That proposition, which in my judgment is also beyond doubt, raises the question of the meaning of the

commonly-used phrase 'school-age'. As it is generally understood, that phrase encompasses the period in a young person's life beginning with the requirement to go to school and ending with the age at which the person is too old to have education in a school. The period before school age, and institutions which may cater for children of such an age, are often called, without any apparent ambiguity or difficulty, 'pre-school'. It appears from the above that an institution concerned with children below school age is unlikely to be regarded as properly called, without qualification, a 'school'. It may be called a 'nursery school', but that does not entitle it to be called simply a 'school' any more than being called a 'law school' does. And the provision of some education to its denizens will not make the institution a 'school' (compare zoos, above); even having education as its main purpose will not make the institution a 'school' (compare universities, above). If an estate agent said that at the end of the road there was a good school, one would not expect to find only a nursery, however good. The services provided in such an institution are 'pre-school'. For these reasons, in my judgment, the unqualified use of the word 'school' does not in its ordinary meaning include a nursery."—*Bright Horizons Family Solutions Ltd v Secretary of State for Communities And Local Government* [2019] EWHC 14 (Admin).

SCHOOL PREMISES. Stat. Def. (" means any land used for the purposes of a school, excluding any land occupied solely as a dwelling by a person employed at the school; and 'school' has the meaning given by section 4 of the Education Act 1996"), Offensive Weapons Act 2019 s.14(10).

SCREENING OPINION. "The term 'screening opinion' is a term which appears in the 2011 Regulations. In regulation 2 it is defined as meaning "a written statement of the opinion of the relevant planning authority as to whether development is EIA development". The same regulation defines 'EIA development' as being development which is either 'Schedule 1 development' or 'Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location'. The references to Schedule 1 development and Schedule 2 development are references to Schedules 1 and 2 of the 2011 Regulations."—*Crematoria Management Ltd, R (On the Application Of) v Welwyn Hatfield Borough Council* [2018] EWHC 382 (Admin).

SEA. Stat. Def., Space Industry Act 2018 s.69.

SELF-BUILD AND CUSTOM HOUSEBUILDING. The building or completion by individuals, associations of individuals, or persons working for them of houses to be occupied as homes by those individuals (Self-build and Custom Housebuilding Act 2015 s.1).

SERVICE. "For the billing authority merely to leave the notice with a third party, not authorised to accept service of the notice on the owner's behalf, or, indeed, to effect service on the authority's behalf, in the hope, or with the intention, that the notice will somehow be brought to the attention of the owner, and where a copy of the notice or its contents are in fact subsequently communicated to the owner by the third party, does not, on any natural or normal usage of the words 'serve' and 'on', constitute 'service' on 'the owner' 'by the authority'."—*UKI (Kingsway) Ltd v Westminster City Council* [2017] EWCA Civ 430.

"This appeal raises a short issue as to the requirements for valid 'service' of a completion notice so as to bring a newly completed building within liability for non-domestic rates.... It is common ground that, by virtue of the opening words of paragraph 8 of Schedule 4A to the Act, the three specific methods there set out do not

exclude other methods of service available under the general law. There is no serious dispute as to what that entails. In *Sun Alliance and London Assurance Co Ltd v Hayman* [1975] 1 WLR 177, 185 CA (a case under the Landlord and Tenant Act 1954), Lord Salmon said: 'According to the ordinary and natural use of English words, giving a notice means causing a notice to be received. Therefore, any requirement in a statute or a contract for the giving of a notice can be complied with only by causing the notice to be actually received – unless the context or some statutory or contractual provision otherwise provides …' (No distinction is drawn in the cases between 'serving' and 'giving' a notice: see *Kinch v Bullard* [1999] 1 WLR 423, 426G.) To similar effect in *Tadema Holdings Ltd v Ferguson* (1999) 32 HLR 866, 873, Peter Gibson LJ said (in a case relating to service of a notice under the Housing Act 1988): '"Serve" is an ordinary English word connoting the delivery of a document to a particular person.' . . . The method of attempted service adopted by the council was far from ideal. As already noted, the purpose of specific provisions such as paragraph 8 is to provide reliable methods of service and to minimise the risk to the council of non-delivery. Given that, as is now accepted, the name and address of the owner could have been discovered by reasonable inquiry, it is not clear why this was not done. We have had no satisfactory explanation for this failure, nor indeed for the failure to take corrective action when the objection to service was raised. . . . The simple answer for the authority may be that, where the date of service is critical, it is able to choose a statutory method which eliminates or minimises the risk of the notice being rendered invalid by failure to specify the correct date of service. If it chooses a non-statutory method it must bear that risk. The risk of prejudice to the owner is limited, since outside the statutory grounds service depends on actual receipt by the intended recipient, and the time for appeal is also related to receipt. . . . The purpose of the 2000 Act, as stated in its long title, was to make provision 'to facilitate the use of electronic communications …'. There is nothing to indicate an intention to cut down the existing law. 46. Against the background of the detailed scheme established by or under the 2000 Act, it may seem anomalous that the same result may be achieved in some cases by more informal means. However, the purpose of the Act and Orders made under it is to provide a clear and certain basis for the routine use of such methods by authorities. That purpose is not undermined by a conclusion that under general principles, and on the particular facts of this case, the notice was successfully served."—*UKI (Kingsway) Ltd v Westminster City Council* [2018] UKSC 67.

SETTING. "That the inspector grasped the concept of the setting of a listed building is demonstrated in the parts of his decision letter where he considered the settings of the other heritage assets and the likely effects of the development on each. Those passages serve to confirm the lawfulness of his approach to identifying the setting of Kedleston Hall, and of his conclusion that the potential effect of the development upon it was no more than 'negligible'. His approach to identifying the setting of each heritage asset he had to consider was, in my view, consistent and sound. So were his conclusions on the likely effect of the proposed development – or its lack of effect – on the setting in question and its impact – or lack of impact – on 'significance'. At no stage did he exaggerate the importance of physical and visual considerations, or unduly diminish the significance of the historical, the social and the economic."—*Catesby Estates Ltd v Steer* [2018] EWCA Civ 1697.

SETTLED ACCOMMODATION. "The term 'settled accommodation' is not a statutory term, but has arisen in a series of cases concerning the ability of an

individual, who has been intentionally homeless, to break the chain of causation by the intervention of a period in, what was first described by Ackner LJ, in *Din v Wandsworth BC* (June 23, 1981 unreported), as a 'settled residence'. That case, and those that have followed it, made it clear that, 'What amounts to "a settled residence" is a question of fact and degree depending upon the circumstances of each individual case.'

Those representing the defendant have brought to my attention, *Knight v Vale Royal RBC* [2003] EWCA Civ 1258, whilst those representing the claimant have brought to my attention, *Huda v Redbridge LBC* [2016] EWCA Civ 709. It seems to me that, as both of these cases are consistent in their approach to the law, and only differ in their conclusions on the facts, neither are of particular persuasive value; whilst the latter considered that the precarious nature of a licence entitled the reviewing officer to determine that the accommodation was not settled despite being occupied for a period of two years, the former concluded that an assured shorthold tenancy was capable of being settled accommodation, despite being able to be determined at the end of six months.

Whilst the allocation of social housing under the 2015 scheme is based upon the number of points awarded to individuals who fulfil certain criteria, I do not consider that this, of itself, is determinative of the meaning of the words 'settled accommodation'. The 2015 scheme is also a discretionary scheme involving evaluative judgments to determine the prioritisation of scarce resources, dependent upon an applicant's and others' particular circumstances; such that whilst an individual who is not in settled accommodation may be awarded 40 welfare points if a member of her household has a sufficient need for and fulfils the other criteria, if an applicant is already in what can properly be considered to be settled accommodation, then there would be no basis for awarding such points.

Therefore, although I accept that the inclusion of the words, 'settled accommodation' in the 2015 scheme, would undoubtedly include the provision of Part VI social housing, I do not consider that it is necessarily limited to such accommodation. On the contrary, I consider that, depending upon the circumstances, and as a matter of fact and degree, the provision of Part VII accommodation may also amount to settled accommodation; such that, if the Part VII is not settled accommodation, then this may lead to an award of 40 category C welfare points if the applicant's household includes someone with a need for such accommodation, whilst if the Part VII accommodation is settled accommodation, there would be no basis for an award of 40 category C welfare points."—*R. (on the application of C) v London Borough of Islington* [2017] EWHC 1288 (Admin).

SEXTING. "'Sexting' is the creating, sharing, sending or posting of sexually explicit messages or images via mobile phones or other electronic devices. It covers a wide variety of circumstances. This case concerns peer-to-peer sexting by young people of photographs, initially self-generated and deliberately sent to another young person, although sometimes transmitted as a result of a request by and/or pressure from the recipient and sometimes sent on by the recipient to third parties. Sexting potentially involves a number of criminal offences, e.g. distributing or showing an indecent photograph of a child contrary to section 1(b) of the Protection of Children Act 1978, or causing or inciting a child to engage in sexual activity contrary to section 10 (read with section 13) of the Sexual Offences Act 2003. These claims particularly

concern the treatment by the police of reports of such behaviour."—*CL, R (on the application of) v The Secretary of State for the Home Department* [2018] EWHC 3333 (Admin).

SHAM MARRIAGE. "In my judgment, there is a difference in principle between a 'sham marriage' and a 'marriage of convenience'. It is clear from the statutory definition that a sham marriage can only be established if there is no genuine relationship between the parties. Of course, a 'marriage of convenience' may also entail a marriage which is not genuine. Indeed, many such marriages of convenience will reflect that fact. However, the hallmark of a marriage of convenience is one that has been entered into, in the context with which we are concerned, for the purpose of gaining an immigration advantage. That follows, in my judgment, from Lord Bingham's acceptance in *Baiai* of the definition of a 'marriage of convenience' in Council Resolution 12337/97 which I set out earlier, namely that it is a marriage entered into 'with the sole aim of circumventing the Rules on entry and residence'."—*Molina, R (On the Application Of) v The Secretary of State for the Home Department* [2017] EWHC 1730 (Admin).

SHARED GROUND LOOP SYSTEM. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

SICKNESS ABSENCE. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

SIGNIFICANT CONTROL. See PERSON WITH SIGNIFICANT CONTROL.

SLAVERY OR SERVITUDE. "The essence of the offence in section 4(1)(a) of the Human Trafficking and Exploitation (Scotland) Act 2015 and its predecessor, section 47(1)(a) of the Criminal Justice and Licensing (Scotland) Act 2010, is that the accused 'holds another person in slavery or servitude'. The two terms are thereby distinguished despite, as the trial judge astutely recognised, the fact that both Chambers and the Shorter Oxford Dictionary define 'servitude' as the state or condition of being a slave. The section also distinguishes between servitude and being required to perform forced or compulsory labour. All of these terms are to be found in Article 4 of the European Convention on Human Rights. Section 4(2) of the Act directs that they are to be construed 'in accordance with' the Article. Regard is to be had to 'any personal circumstances . . . that make the person more vulnerable than other persons'. The statute thus introduces certain somewhat complicating features into what might otherwise be a straightforward question in a case such as the present. . . . It was not disputed that there was sufficient evidence that the appellant had kept the complainer in a state of servitude. That would seem clear from the periodic confinement of the complainer and a requirement upon him to work for little reward; all fenced by threats of violence. . . . Section 4 somewhat unnecessarily expressly requires the accused to be aware that the complainer is being held in a state of servitude, but that is all. The provision relative to taking into account any vulnerabilities of the complainer might be seen as obvious. Equally, whether the appellant was aware of them may have been a consideration which the jury might have had regard to, if the appellant had professed ignorance of them. However, in circumstances in which the Crown were not founding upon an abuse of a vulnerable person (a fact which would have to have been libelled) there was no need for a specific direction on the point. Whether, at the time, the complainer had mental health difficulties was not a material part of the case, although it might be ventured that without the existence of some vulnerabilities it is difficult to

conceive of a situation where keeping a person in servitude could persist for long."—*Miller, John Miller Against Her Majesty's Advocate* [2019] ScotHC HCJAC_7.

SLOT. "The case concerns 'slots' at Luton and Gatwick airports. A 'slot' is essentially the right to use airport infrastructure, and in particular to move an aircraft from a terminal to a runway (or vice versa), at a specific airport at a specific time. The term is defined in article 2 of Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports ('the Slots Regulation') in these terms: 'the permission given by a coordinator in accordance with this Regulation to use the full range of airport infrastructure necessary to operate an air service at a coordinated airport on a specific date and time for the purpose of landing or take-off as allocated by a coordinator in accordance with this Regulation'."—*Monarch Airlines Ltd, R (on the application of) v Airport Coordination Ltd* [2017] EWCA Civ 1892.

SOCIAL SUPPORT. See *The Secretary of State for Work and Pensions Against MMCK* [2017] ScotCS CSIH 57.

SOCIAL WORK PROFESSIONAL. Stat. Def., Data Protection Act 2018 s.204.

SOLAR COLLECTOR. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

SOLICIT. See CANVASS OR SOLICIT.

SOLICITOR ADVOCATE. "In the course of the appeal before this court, a question arose concerning the use of the term 'solicitor advocate' in the relevant legislation and rules.... The 2011 Rules amended the 2005 Rules by substituting 'counsel' for 'advocate' where that term had appeared in the latter rules. It also provided for the omission of the definition of 'advocate' which had been contained in rule 2 of the 2005 Rules. The 2011 Rules also provided that Schedule 1 to the 2005 Rules be amended and that Schedule 2 should be removed. The upshot of all this is that no reference to 'solicitor advocate' remains within the 2005 Rules. The relevant terms are simply 'counsel' or 'solicitor'. As regards the present appeal, therefore, this means that Mr Neville, when appearing for the appellant in the Crown Court, fell to be paid by the legal aid authorities as a solicitor and in no other capacity. A solicitor has rights of audience under section 50 of the 1978 Act but is not included in the expression 'counsel' for the purpose of calculating payment of legal aid, nor for the purpose of the two counsel provision in rule 4(3) of the 2012 Rules."—*Maguire, Re Application for Judicial Review (Northern Ireland)* [2018] UKSC 17.

SOLVENCY. "'Solvency' is a word that can have various significations, but for present purposes we intend it to mean balance sheet solvency: a comparison of total assets and total liabilities, with a view to determining whether the overall value of the assets is adequate to meet the liabilities. 'Liquidity', by contrast, relates to the ability of a company or other trading entity to meet its debts as they fall due; it is generally dependent on cash flow."—*Liquidators of Grampian Maclennan's Distribution Services Ltd Reclaiming Motion by, against Carnbroe Estates Ltd* [2018] ScotCS CSIH 7.

SOVEREIGN. "In all the circumstances, I do not consider that the Hearing Officer's finding that 'sovereign is a denomination of money' can be impugned. It had an evidential foundation and was one that could reasonably be reached.... The real question must, I think, be whether the fact that no one but RM can make sovereign coins for United Kingdom purposes means that the word 'sovereign' must be

distinctive of its coins. I do not think it does. The Hearing Officer made unchallenged findings that 'the trade in gold commemorative coins is international in nature' (paragraph 62 of the Decision), that 'a small proportion of coins so-named [i.e. as "sovereigns"] have been produced outside of RM's control' (paragraph 62) and that '"sovereign" gold commemorative coins from, at least, the Isle of Man, Jersey, Gibraltar and/or Australia are also available in the UK' (paragraph 77). In fact, while sovereign coins from jurisdictions other than the United Kingdom commonly bear the word 'sovereign' (albeit, it may be said, with a word indicating the relevant country or territory), United Kingdom sovereigns hardly ever have, and RM's promotional material usually involves 'the designation "sovereign" used in association with the name Royal Mint' (paragraph 34 of the Decision).... It seems to me, though, that matters such as those mentioned in paragraph 41 above provided a sufficient basis for the Hearing Officer's findings. There was plainly evidence indicating that there are non-United Kingdom 'sovereigns' which are traded in the United Kingdom as part of a trade which is 'international in nature'. In the circumstances, the Hearing Officer was entitled, in my view, to conclude (as he did) that 'the word sovereign alone did not guarantee the trade origin of such goods [i.e. gold commemorative coins] because it had become customary in the current language or in the bona fide and established practices of the trade' (paragraph 78 of the Decision)."—*Royal Mint Ltd v Commonwealth Mint and Philatelic Bureau Ltd* [2017] EWHC 417 (Ch).

SOVEREIGNTY. "F has strong beliefs surrounding the concept of 'sovereignty'. This is a very particular concept for him. It has nothing at all to do with contemporary debate. It is essentially a personal ideology. F believes that central to the concept is the power and writ of the individual. 'We are each…', he says, 'our own sovereign. We come from the Earth, we are the creations of the universe. We are governed by a Common Law but only to the extent that we depart from three principles. These three imperatives are: to do no harm; to cause no loss; to inflict no injury.' In circumstances where they are proved to have occurred, to the criminal standard of proof, F asserts that what he calls the Common Law is then triggered."—*T (A child), Re* [2019] EWHC 1572 (Fam).

SPACECRAFT. Stat. Def., Space Industry Act 2018 s.2.

SPACEFLIGHT ACTIVITIES. Stat. Def., Space Industry Act 2018 s.1.

SPACEPORT. Stat. Def., Space Industry Act 2018 s.3.

SPECIAL MISSION. "This appeal concerns 'special missions'. We use the definition of 'special mission' found in the UN Convention on Special Missions, 1969 ('the UNCSM'). That reads: a temporary mission, representing the State, which is sent by one State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task;.. States use special missions in international relations in lieu of or in addition to their permanent diplomatic missions in other countries. The issues on this appeal are about the immunities to be given to special missions."—*The Freedom And Justice Party, R (On the Application Of) v The Secretary of State for Foreign and Commonwealth Affairs* [2018] EWCA Civ 1719.

SPRINGBOARD INJUNCTION. "The typical purpose of a springboard injunction is to deprive a Defendant of any head start they have obtained by improper use of information or other property belonging to the Claimant. In *QBE Management Services (UK) Ltd v Dymoke* [2012] EWHC 80 (QB) Hadden-Cave J reviewed the authorities on springboard injunctions and summarised the principles as follows:

240 First, where a person has obtained a 'head start' as a result of unlawful acts, the Court has the power to grant an injunction which restrains the wrongdoer, so as to deprive him of the fruits of his unlawful acts. This is often known as "springboard" relief.

241 Second, the purpose of a "springboard" order as Nourse LJ explained in *Roger Bullivant v Ellis* [1987] ICR 464 is 'to prevent the defendants from taking unfair advantage of the springboard which [the Judge] considered they must have built up by their misuse of the information in the card index' (at page 476G). May LJ added that an injunction could be granted depriving defendants of the springboard 'which ex hypothesi they had unlawfully acquired for themselves by the use of the plaintiffs' customers' names in breach of the duty of fidelity (at 478E-G). The Court of Appeal upheld Falconer J's decision restraining an employee who had taken away a customer card index from entering into any contracts made with customers.

242 Third, "springboard" relief is not confined to cases of breach of confidence. It can be granted in relation to breaches of contractual and fiduciary duties (see *Midas IT Services v Opus Portfolio Ltd.*, unreported Ch.D, Blackburne J 21/12/99, pp. 18-19), and flows from a wider principle that the court may grant an injunction to deprive a wrongdoer of the unlawful advantage derived from his wrongdoing. As Openshaw J explained in *UBS v Vestra Wealth* at paragraphs [3] and [4]:

"There is some discussion in the authorities as to whether springboard relief is limited to cases where there is a misuse of confidential information. Such a limitation was expressly rejected in *Midas IT Services v Opus Portfolio Ltd*, an unreported decision of Blackburne J made on 21 December 1999, although it seems to have been accepted by Scott J in *Balston Ltd v Headline Filters Ltd* [1987] FSR 330 at 340. In the 20 years which have passed since that case, it seems to me that the law has developed; and I see no reason in principle by which it should be so limited.

In my judgment, springboard relief is not confined to cases where former employees threaten to abuse confidential information acquired during the currency of their employment. It is available to prevent any future or further economic loss to a previous employer caused by former staff members taking an unfair advantage, and 'unfair start', of any serious breaches of their contract of employment (or if they are acting in concert with others, of any breach by any of those others). That unfair advantage must still exist at the time that the injunction is sought, and it must be shown that it would continue unless retrained. I accept that injunctions are to protect against and to prevent future and further losses and must not be used merely to punish breaches of contract."

243 Fourth, "springboard" relief must, however, be sought and obtained at a time when any unlawful advantage is still being enjoyed by the wrongdoer: *Universal Thermosensors v. Hibben* [1992] 1 WLR 840 Nicholls V-C; see also *Sun Valley Foods Ltd v. Vincent* [2000] FSR 825 esp at 834.

244 Fifth, "springboard" relief should have the aim "simply of restoring the parties to the competitive position they each set out to occupy and would have occupied but for the defendant's misconduct" (per Sir David Nicholls VC *Universal Thermosensors v. Hibben* [1992] 1 WLR 840 at [855A]). It is not fair and just if it has a much more far-reaching effect than this, such as driving the defendant out of business [855A],

245 Sixth, "springboard" relief will not be granted where a monetary award would have provided an adequate remedy to the Claimant for the wrong done to it (*Universal Thermosensors v. Hibben* [1992] 1 WLR 840 at [855B]).

246 Seventh, "springboard" relief is not intended to punish the Defendant for wrongdoing. It is merely to provide fair and just protection for unlawful harm on an interim basis. What is fair and just in any particular circumstances will be measured by (i) the effect of the unlawful acts upon the Claimant; and (ii) the extent to which the Defendant has gained an illegitimate competitive advantage (see *Sectrack NV. v. (1) Satamatics Ltd (2) Jan Leemans* [2007] EWHC 3003 Flaux J). The seriousness or egregiousness of the particular breach has no bearing on the period for which the injunction should be granted. In this regard, it is worth bearing in mind what Flaux J, said at paragraph [68]:

"[68] I agree with Mr Lowenstein that logically, the seriousness of the breach and the egregiousness of the Defendants' conduct cannot have any bearing on the period for which the injunction should be granted – what matters is the effect of the breach of confidence upon the Claimant in the sense of the extent to which the First Defendant has gained an illegitimate competitive advantage. In my judgment, Mr Cohen's submissions seriously underestimate the unfair competitive advantage gained by the Defendants from access to the Claimant's 'customer list' and ignore, in any event, the impact (if the injunction were lifted) of actual or potential misuse of other confidential information such as volume of business or pricing information. It is important in that context to have in mind that the Claimant maintains in its evidence that all the information said to be confidential remains confidential." (emphasis added)

247 Eighth, the burden is on the Claimant to spell out the precise nature and period of the competitive advantage. An 'ephemeral' and 'short term' advantage will not be sufficient (per Jonathan Parker J in *Sun Valley Foods Ltd v. Vincent* [2000] FSR 825, 834)."—*Aquinas Education Ltd v Miller* [2018] EWHC 404 (QB).

STALKING PROTECTION ORDER. Stat. Def., Stalking Protection Act 2019 s.1.

STATE. "By article 2(1)(b) [of para 1 of the United Nations Charter], 'State' is defined in broad terms, as meaning: (i) the State and its various organs of government; (ii) constituent units of a federal State or political subdivisions of the State, which are entitled to perform acts in the exercise of sovereign authority, and are acting in that capacity; (iii) agencies or instrumentalities of the State or other entities, to the extent that they are entitled to perform and are actually performing acts in the exercise of sovereign authority of the State; and (iv) representatives of the State acting in that capacity."—*Belhaj v Straw* [2017] UKSC 3.

STATUTE BILL. "The concept of a 'statute bill' refers to a bill prepared in accordance with Section 64, delivered in accordance with Section 69 in respect of which there is a statutory entitlement of the client to seek assessment by the Court under Section 70. Whether a bill is a 'statute bill' must therefore be determined in accordance with the relevant statutory provisions, explained by authority where relevant."—*Richard Slade And Company Solicitors v Boodia* [2017] EWHC 2699 (QB).

"Not every bill that a solicitor renders to his client is a 'statute bill'. A 'statute bill' is one complying with the Solicitors Act 1974. Where a solicitor has delivered such a bill to his client, he can potentially sue on it, but he cannot subsequently charge any more for the work in question and, subject to certain time limits, the client can ask for the bill to be assessed by the Court under section 70 of the Act. Depending on the terms of the retainer, a solicitor may be able to raise statute bills during the course of a retainer as well as when he has completed the task on which he has been instructed,

but interim bills may, alternatively, represent requests for payments on account. If that is the case, the time limits on applications for assessment do not bite and the solicitor cannot bring proceedings to recover his fees. On the other hand, it may be open to the solicitor subsequently to increase the amounts claimed and also to terminate the retainer if a bill is not paid. . . . Section 70(6) recognises that a bill can encompass both profit costs and 'costs other than profit costs', but it does not tell you whether a bill must include both. . . . It seems to me that the fact that the various bills rendered by the appellant to Mr and Mrs Boodia included only profit costs or disbursements, not both, did not prevent them from being interim statute bills."—*Slade (t/a Richard Slade And Company) v Boodia* [2018] EWCA Civ 2667.

STARTER HOME. Stat. Def., Housing and Planning Act 2016 s.2.

STATUTORY AUDITED ACCOUNTS. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

STATUTORY UNDERTAKER. Stat. Def., Space Industry Act 2018 s.69.

STEAM MEASURING EQUIPMENT. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

STRANGLE. "The judge referred in his judgment, to the Oxford English Dictionary (OED) definition of 'strangle' to confirm the meaning in ordinary usage of a single English word, an approach he said he did not think was precluded; and to the two senses in which 'strangle' was defined in that dictionary. These were first: 'To kill by external compression of the throat' and second 'To constrict painfully (of the neck or throat)'. Mr Price does not submit that there is an invariable rule that dictionaries should not be referred to. But, he submits, there is a danger where one is considering the ordinary meaning of words that doing so can lead to an overly literal approach, without regard to context, and this is what occurred in this case. The context here was one of domestic abuse, where strangulation in the second sense is often encountered, something of which it would be appropriate, he submits, to take judicial notice, when resolving this aspect of the appeal."—*Stocker v Stocker* [2018] EWCA Civ 170 (and see UKSC below).

"Therein lies the danger of the use of dictionary definitions to provide a guide to the meaning of an alleged defamatory statement. That meaning is to be determined according to how it would be understood by the ordinary reasonable reader. It is not fixed by technical, linguistically precise dictionary definitions, divorced from the context in which the statement was made. 26. Moreover, once the verb, 'strangle' is removed from its context and given only two possible meanings before it is reconnected to the word, 'tried' the chances of a strained meaning are increased. The words must be taken together so as to determine what the ordinary reasonable reader would understand them to mean. Mitting J examined the word 'strangle' in conspicuous detail before considering it in conjunction with the word, 'tried'. Having determined that 'strangle' admitted of only two possible meanings, he then decided that 'tried' could be applied to only one of these. Underpinning his reasoning is the unarticulated premise that 'to try' is necessarily 'to try and fail'. Since Mr Stocker had not failed to constrict his wife's throat, the judge concluded that the only feasible meaning of the words was that he had tried (and failed) to kill her. But that is not how the words are used in common language. If I say, 'I tried to regain my breath', I would not be understood to have tried but failed to recover respiratory function. . . . It will be clear from what I have said already that, in my view, Mitting J fell into legal error by relying upon the dictionary definition of the verb 'to strangle' as dictating the meaning

of Mrs Stocker's Facebook post, rather than as (as Sharp LJ suggested) a check. In consequence, he failed to conduct a realistic exploration of how the ordinary reader of the post would have understood it. Readers of Facebook posts do not subject them to close analysis. They do not have someone by their side pointing out the possible meanings that might, theoretically, be given to the post. Anyone reading this post would not break it down in the way that Mitting J did by saying, well, strangle means either killing someone by choking them to death or grasping them by the throat and since Mrs Stocker is not dead, she must have meant that her husband tried to kill her – no other meaning is conceivable.... return to the ordinary reader of the Facebook post. Such a reader does not splice the post into separate clauses, much less isolate individual words and contemplate their possible significance. Knowing that the author was alive, he or she would unquestionably have interpreted the post as meaning that Mr Stocker had grasped his wife by the throat and applied force to her neck rather than that he had tried deliberately to kill her. 50. Ironically, perhaps, this conclusion is reinforced by the consideration that only one meaning is to be attributed to the statement. Taking a broad, overarching view, and keeping in mind that only one meaning could be chosen, the choice to be made between the meaning of the words being that Mr Stocker grasped his wife by the neck or that he tried to kill her is, in my opinion, a clear one. If Mrs Stocker had meant to convey that her husband had attempted to kill her, why would she not say so explicitly? And, given that she made no such allegation, what would the ordinary reasonable reader, the casual viewer of this Facebook post, think that it meant? In my view, giving due consideration to the context in which the message was posted, the interpretation that Mr Stocker had grasped his wife by the neck is the obvious, indeed the inescapable, choice of meaning."—*Stocker v Stocker* [2019] UKSC 17.

STREET CRUISE. "The terms 'street cruise' and 'participating in a street-cruise' are defined in Schedule 2 of the order which is in these terms: 'Street-Cruise' 1. 'Street-Cruise' means a congregation of the drivers of 2 or more motor-vehicles (including motor-cycles) on the public highway or at any place to which the public have access within the Claimant's local government area (Known as the City of Birmingham) as shown delineated in blue on the map at Schedule 1, at which any person, whether or not a driver or rider, performs any of the activities set out at para.2 below, so as, by such conduct, to cause any of the following: (i) excessive noise; (ii) danger to other road users (including pedestrians); (iii) damage or the risk of damage to private property; (iv) litter; (v) any nuisance to another person not participating in the street-cruise. 2. The activities referred to at para.1, above, are: (i) driving or riding at excessive speed, or otherwise dangerously; (ii) driving or riding in convoy; (iii) racing against other motor-vehicles; (iv) performing stunts in or on motor-vehicles; (v) sounding horns or playing radios; (vi) dropping litter; (vii) supplying or using illegal drugs; (viii) urinating in public; (ix) shouting or swearing at, or abusing, threatening or otherwise intimidating another person; (x) obstruction of any other road-user. 'Participating in a Street-Cruise' 3. A person participates in a street-cruise whether or not he is the driver or rider of, or passenger in or on, a motor-vehicle, if he is present and performs or encourages any other person to perform any activity, to which 'paras. 1-2' above apply, and the term 'participating in a street-cruise' shall be interpreted accordingly."—*Birmingham City Council v Sharif* [2019] EWHC 1268 (QB).

SUBORDINATE LEGISLATION. Stat. Def., ("means—

(a) any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made under any Act, or
(b) any instrument made under an Act of the Scottish Parliament, Northern Ireland legislation or a Measure or Act of the National Assembly for Wales, and (except in Schedule 2 or where there is a contrary intention) includes any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other instrument made on or after exit day under any retained direct EU legislation") – European Union (Withdrawal) Act 2018 s.20(1).

Stat. Def., Data Protection Act 2018 s.205.

SUBSTANTIAL. "27. The admirably concise submissions of Mr Etherington QC for the appellant correctly point out that as a matter simply of dictionary definition, 'substantial' is capable of meaning either (1) 'present rather than illusory or fanciful, thus having some substance' or (2) 'important or weighty', as in 'a substantial meal' or 'a substantial salary'. The first meaning could fairly be paraphrased as 'having any effect more than the merely trivial', whereas the second meaning cannot. It is also clear that either sense may be used in law making. In the context of disability discrimination, the Equality Act 2010 defines disability in section 6 as an impairment which has a substantial and long-term effect on day to day activities, and by the interpretation section, section 212, provides that '"Substantial" means more than minor or trivial.' It thus uses the word in the first sense. Conversely, the expression 'significant and substantial' when used to identify which breaches by the police of the Codes of Practice under the Police and Criminal Evidence Act 1984 will lead to the exclusion of evidence (see for example *R. v Absolam* (1988) 88 Cr App R 332 and *R. v Keenan* [1990] 2 QB 54) is undoubtedly used in the second sense. It is to be accepted that the word may take its meaning from its context. It is not surprising that in the context of triggering a duty to make reasonable adjustments to assist the disabled, the first sense should be used by the Equality Act; the extent of adjustments required varies with the level of disability and a wide spectrum of both is to be expected. Mr Etherington additionally submits that this usage shows that the first sense does not entirely strip the word 'substantially' of meaning."—*R. v Golds* [2016] UKSC 61.

SUBSTITUTION. "For the purposes of section 35(6)(a) of the 1980 Act and CPR Part 19.5(3)(a) the question was whether the judge could be satisfied that the Firm was 'substituted' for the Company which had originally been named in the Claim Form as defendant in mistake for the Firm. These provisions draw a clear distinction between addition, on the one hand, and substitution on the other. The ordinary meaning of the word substitution connotes the replacement of one person or thing by another. As Pearce LJ observed in *Davies v Elsby Brothers* [1961] 1 WLR 170 at 173, when considering the substitution of a party permitted under the rules in different circumstances, 'substitution involves the addition of a party in replacement of the party that is removed.'"—*Godfrey Morgan Solicitors (A Firm) v Armes* [2017] EWCA Civ 323.

SUCCESS. See REAL PROSPECT OF SUCCESS.

SULPHUR DIOXIDE. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

SUM AWARDED. "So it is clear that in this context the reference to a 'sum awarded' is a reference to a monetary award. It is true that the subject matter of the present claim can be expressed in money terms. It is also true that one sum of £204,000 is much like another sum of £204,000. And it was in effect the sum in

dispute in this case. But this was a claim, not that there was a relation of debtor and creditor for £204,000 between the claimants and the solicitors, but that there was one of trustee and beneficiary in respect of the solicitors' claim on their bank for £204,000. A statement that you own a particular credit is different from the statement that someone owes you a debt. If your debtor becomes bankrupt, you may not recover all you are due. If your trustee becomes bankrupt, the creditors will have no claim on trust assets. In some contexts, the word 'money' bears a narrow meaning, such as physical currency, banknotes and coins. In others it may be expanded beyond this to include, for example, debts owed by others. And there are rare cases where the meaning is expanded further to include other rights as well, including personal property (see eg *Perrin v Morgan* [1943] AC 399, in the context of a will gift of 'moneys'). In my judgment, a decision that a particular asset (here an intangible credit in the conveyancing solicitors' client account) belongs beneficially to a particular claimant is not a 'monetary award'. It is instead a decision awarding the ownership of the asset to a particular person. Accordingly, in my judgment there is no justification in rule 36.17 for expanding the meaning of the phrase 'sum awarded' beyond the case of a money remedy awarded in a claim for debt or damages, to the case of the award of beneficial ownership of a debt owned by the defendant but owed to the defendant by a third party. The consequence would be that, if rule 36.17 had applied at all, paragraph (4)(a) would not apply at all, and the additional amount under paragraph (4)(d) would be calculated by reference to the costs awarded to the claimants."—*Knight v Knight (Costs)* [2019] EWHC 1545 (Ch).

SUPER-INJUNCTION. "Finally, I should record and emphasise that the order I have made is not a 'super injunction'. That term is often misused to refer to almost any kind of injunction that impinges on freedom of expression. Properly used, it refers only to a narrow and vanishingly rare category of order: the one which prohibits the respondent and others from identifying the existence of the injunction and/or the applicant's interest in it. There were never very many of these, and to the best of my knowledge none have been granted for many years."—*Advertising Standards Authority Ltd v Mitchell* [2019] EWHC 1469 (QB).

SUPPLY. "Certain further cases on the nature of a supply were cited by counsel for HMRC in support of the proposition that the existence of a contractual right to a service could demonstrate a supply for VAT purposes. We do not doubt that the existence of a contractual right may be an important indication that a supply has occurred. Nevertheless, in the light of the principles laid down in Card Protection Services we are of opinion that any contractual rights must be interpreted in the context of the whole circumstances of the individual case."—*Findmypast Limited, Appeal by the Commissioners for Her Majesty's Revenue and Customs against a Decision of the Upper Tribunal in an Appeal by* [2017] ScotCS CSIH 59.

SUPPLY...FOR CONSIDERATION. "i) The concept of a 'supply' is 'an autonomous concept of the EU-wide VAT system' (the Airtours case, at paragraph 20, per Lord Neuberger); ii) A supply of goods or services 'for consideration', within the meaning of article 2(1) of the Principal VAT Directive, 'presupposes the existence of a direct link between the goods or services provided and the consideration received' (Joined Cases C-53/09 and C-55/09 *Revenue and Customs Commissioners v Loyalty Management UK Ltd* and *Baxi Group Ltd v Revenue and Customs Commissioners* [2010] STC 2651, at paragraph 51 of the judgment of the Court of Justice of the European Union ('CJEU'); see also Case 102/86 *Apple and Pear Development*

Council v Customs and Excise Commissioners [1988] STC 221, at paragraph 12 of the judgment); iii) A supply of services 'is effected "for consideration", within the meaning of art 2(1) of [the Principal VAT Directive], and hence is taxable, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient' (Case C-653/11 *Revenue and Customs Commissioners v Newey* [2013] STC 2432, at paragraph 40 of the CJEU's judgment; see also Case C-16/93 *Tolsma v Inspecteur der Omzetbelasting Leeuwarden* [1994] STC 509, at paragraph 14 of the judgment);"—*Adecco UK Ltd v Revenue & Customs* [2018] EWCA Civ 1794.

SUSPENSION. "First, Hirst LJ expressed the view (at p 1112C-D) that dictionary definitions of 'suspension' and 'interruption' all contemplated 'a break in a period or course of events which are presently in train'. In agreement with the Inner House, I cannot agree with that view as the dictionary definition of 'suspension' to which Hirst LJ referred included 'postponement' as one of its meanings. In any event, as I have discussed above, there is reason to conclude that 'suspension' in the context of prescription or limitation has a broader meaning in several legal systems."—*Warner v Scapa Flow Charters (Scotland)* [2018] UKSC 52.

SUSTAINABLE DEVELOPMENT. "The Committee noted that no definition of sustainable development is provided in the bill or the accompanying documents and that this is consistent with the Land Reform (Scotland) Act 2016 and the Community Empowerment (Scotland) Act 2015. Organisations such as the National Farmers Union for Scotland (NFUS) and the Institute of Chartered Foresters expressed concern at the lack of clarity on the new powers for sustainable development. NFUS stated that it is not against the concept of sustainable development. However, reassurance is required and examples of how land will be managed for sustainable development would be helpful. It expressed a fear that if there are no clear limits to how land will be managed there is a risk that the concept of sustainable development could become contested and divisive in the longer term. The Scottish Government stated that it was a conscious decision not to define sustainable development in the bill. Officials argued that it is common to leave a term undefined in legislation, if that term is well understood and the ordinary meaning is suitable for the purposes of the legislation. It highlighted the court ruling by Lord Gill which stated that—...the expression sustainable development is in common parlance [...]. It is an expression that would be readily understood by the legislators, the Ministers and the Land Court 16 The Scottish Government also directed the Committee to the Policy Memorandum for the relatively recent Land Reform (Scotland) Bill, which it believed to contain a useful working definition of the term— Sustainable development is defined as development that is planned with appropriate regard for its longer term consequences, and is geared towards assisting social and economic advancement that can lead to further opportunities and a higher quality of life for people whilst protecting the environment. Sustainable development requires an integrated approach to social, economic and environmental outcomes.

The Committee acknowledges that it is not current practice to define 'sustainable development' in legislation. However, some stakeholders are clearly seeking clarity on the term and its use in relation to forestry. In a similar manner to the issue regarding the definition of 'sustainable forest management' the Committee recommends that the Scottish Government should make a clear commitment to include the current working

definition of sustainable development in the Forestry Strategy." Scottish Parliament's Rural Economy and Connectivity Committee's Stage 1 Report on the Bill for the Forestry and Land Management (Scotland) Act 2018.

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TAMPERING. "The term 'tampering' is not defined by the Road Traffic Act 1988. It bears its ordinary, everyday meaning. It clearly means something more than mere 'touching'. The *Oxford English Dictionary* defines tampering as 'interfering with something without authority or so as to cause damage'."—*Js (A Child) v Director of Public Prosecutions* [2017] EWHC 1162 (Admin).

TAX EVASION FACILITATION OFFENCE. (1) A UK tax evasion facilitation offence is an offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by another person; aiding, abetting, counselling or procuring the commission of a UK tax evasion offence (q.v.); or being involved art and part in the commission of an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax (Criminal Finances Act 2017 Pt 3, s.45). (2) A foreign tax evasion facilitation offence is conduct which amounts to an offence under the law of a foreign country, relates to the commission by another person of a foreign tax evasion offence under that law, and would, if the foreign tax evasion offence were a UK tax evasion offence, amount to a UK tax evasion facilitation offence (s.46). It is also an offence to fail to prevent facilitation of a UK tax evasion offence or a foreign tax evasion offence (ss.45, 46).

TAX EVASION OFFENCE. (1) A UK tax evasion offence is an offence of cheating the public revenue or an offence under the law of any part of the United Kingdom or consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax (Criminal Finances Act 2017 Pt 3, s.45). (2) A foreign tax evasion offence is conduct which amounts to an offence under the law of a foreign country, relates to a breach of a duty relating to a tax imposed under the law of that country, and would be regarded by the courts of any part of the United Kingdom as amounting to being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of that tax (s.46). See Tax evasion facilitation offence.

TELEVISION LICENCE. Stat. Def., Tenant Fees Act 2019 s.28, Sch.1, para.10.

TENANCY AGREEMENT. Stat. Def., Tenant Fees Act 2019 s.28.

TENANCY DEPOSIT. Stat. Def., Tenant Fees Act 2019 s.28, Sch.1, para.2.

TEMPORARY ACCOMMODATION. "The phrase 'temporary' accommodation has been treated as meaning precarious rather than simply limited in time."—*Doka v London Borough of Southwark* [2017] EWCA Civ 1532.

TESTING LABORATORY. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2.

TIED PUB. Alcohol-licensed premises, occupied under a tenancy or licence, whose main activity (or one of whose main activities) is to sell alcohol to the public for consumption on the premises, and where the tenant or licensee is subject to a

contractual obligation that some or all of the alcohol is supplied by the landlord or someone nominated by the landlord (Small Business, Enterprise and Employment Act 2015 s.68).

TORTURE. For extensive discussion of the international definition of torture see—*Medical Justice v Secretary of State for the Home Department* [2017] EWHC 2461 (Admin).

TOWARDS. "The order prohibits Mr Lennard from using offensive, foul, threatening words or behaviour towards Grace Okoro-Anyaeche. It is not disputed that at the time (as he accepts) Mr Lennard used words that were at least 'foul', Grace Okoro-Anyaeche was not present. In those circumstances, was the spoken foul language directed by Mr Lennard 'towards' the social worker for the purposes of the protective injunction from which she benefited? I am satisfied that the answer is no. Using the word 'towards' in its wider sense, it is possible to construe Mr Lennard's spoken words as having been directed towards Grace Okoro-Anyaeche in that she was plainly the subject of some of those words. However, using the word 'towards' in its narrower, and in my judgment, plain sense, the words spoken by Mr Lennard could not have been used towards Grace Okoro-Anyaeche because she was not present at the time and the statements made were verbal in nature. It might, I suppose, be said that the words spoken by Mr Lennard could be taken to have been used towards Grace Okoro-Anyaeche in that, whilst she was not present to hear them, what was said was passed on to her by others. Having given careful consideration to the matter, and in the context of the alleged breach in question being the use by Mr Lennard of verbal abuse, I conclude that I favour the narrow interpretation of the word 'towards' in this context and take Parker J's order to mean that Mr Lennard is prohibited from using offensive, foul, threatening words or behaviour in the presence of and in the direction of Grace Okoro-Anyaeche. Conduct such as, for example, Mr Lennard publishing his abuse on social media and Grace Okoro-Anyaeche thereafter reading the same, or posting a letter to her with the same result, would be caught in these circumstances. However, verbal abuse by Mr Lennard direct at Grace Okoro-Anyaeche when she is not present will not. On the local authority's single pleaded allegation, the court here is concerned here with words spoken about, but in the absence of, Grace Okoro-Anyaeche. I take the view I do on the proper interpretation of the word 'towards' in these circumstances primarily by reason of the fact that a breach of this injunction carries with it penal consequences. On the one hand, I must, of course, be conscious of the protective function of injunction, and that that protective function argues for a broad, purposive application of its terms. The court grants an injunction to provide protection and relief in circumstances where it is satisfied that such protection and relief is merited. However, against this, the injunction carries with it very serious penal consequences and can, within the current context, result in the imprisonment of the person bound by the injunction for a period of up to two years. The long list of procedural requirements that I set out at the beginning of this judgment further illuminates the strict approach the court takes to the examination of breaches that can result in a term of incarceration."—*London Borough of Wandsworth v Lennard* [2019] EWHC 1552 (Fam).

TRADE. "In view of the absence of a statutory definition, it is not surprising that a considerable body of case law has developed on the question of what constitutes a 'trade' within the meaning of the income tax legislation. Both the FTT and the Upper Tribunal quoted extensively from that case law. For present purposes, however, it is

sufficient to concentrate mainly on the decisions of this court in the *Eclipse* and *Samarkand* cases, each of which post-dated the FTT Decision and the latter of which post-dated the UT Decision. As it happens, both cases concerned film schemes, although there were substantial differences between the schemes in *Eclipse* and *Samarkand*, and neither scheme bore any close similarity to the scheme in the present case.

The significance of the two cases, in my judgment, is that they provide an authoritative and recent re-statement of the principles which should be applied in deciding whether activities undertaken by a taxpayer constitute a trade for tax purposes. The passages of principal relevance are to be found in paragraphs [109] to [117] of the judgment of the court in *Eclipse*, delivered by Sir Terence Etherton C, and in paragraphs [43] to [50], and [59] to [63] of my judgment in *Samarkand*, with which David Richards and Arden LJJ agreed. It was common ground that, at least in this court, these are the principles which must now be followed, although I should record that Ms McCarthy reserved the right to argue in a higher court that Mr Degorce's activities in the 2006/07 tax year were inherently of a trading character, such that the FTT and the Upper Tribunal erred in law in considering them to be the composite acquisition of an income stream.

Although the passages to which I have referred need to be read in full, the following brief extracts are in my view of central importance. In *Eclipse*, the court said:

'111. ... It is necessary to stand back and look at the whole picture and, having particular regard to what the taxpayer actually did, ask whether it constituted a trade.

112. The Income Tax Acts have never defined trade or trading further than to provide that (in the words of TA 1988, s.832(1) which was applicable to the relevant tax year) trade includes every trade, manufacture, adventure or concern in the nature of trade. As an ordinary word in the English language "trade" has or has had a variety of meanings or shades of meaning. Its meaning in tax legislation is a matter of law. Whether or not a particular activity is a trade, within the meaning of the tax legislation, depends on the evaluation of the activity by the tribunal of fact. These propositions can be broken down into the following components. It is a matter of law whether some particular factual characteristic is capable of being an indication of trading activity. It is a matter of law whether a particular activity is capable of constituting a trade. Whether or not the particular activity in question constitutes a trade depends upon an evaluation of all the facts relating to it against the background of the applicable legal principles. To that extent the conclusion is one of fact, or, more accurately, it is an inference of fact from the primary facts found by the fact-finding tribunal.

113. It follows that the conclusion of the tribunal of fact as to whether the activity is or is not a trade can only be successfully challenged as a matter of law if the tribunal made an error of principle or if the only reasonable conclusion on the primary facts found is inconsistent with the tribunal's conclusion. These propositions are well established in the case law ...

114. In *Marson v Morton* [1986] STC 463 at 470-471, [1968] 1 WLR 1343 at 1348-1348 Sir Nicolas Browne-Wilkinson V-C set out a list of matters which have been regarded as a badge of trading in reported cases. He emphasised, however, that the list was not a comprehensive statement of all relevant matters nor was any one of them decisive in all cases. He said that the most they can do is to provide common sense guidance to the conclusion which is appropriate; and that in each case it is

necessary to stand back and look at the whole picture and, having regard to the words of the statute, ask whether this was an adventure in the nature of trade … The cases by reference to which the list was compiled are not sufficiently analogous to the facts of the present case to make the list of value in these proceedings.'

In *Samarkand*, I said at [59]:

'… At the most basic level, it is now clear from *Eclipse*, if it was not clear before, that the question whether what the taxpayer actually did constitutes a trade has to be answered by standing back and looking at the whole picture: see [111]. Although it is a matter of law whether a particular activity is capable of constituting a trade, whether or not it does so in any given case "depends upon an evaluation of all the facts relating to it against the background of the applicable legal principles": see [112]. It follows that it can never be appropriate to extract certain elements from the overall picture and treat them, viewed in isolation, as determinative of the issue. But that, in essence, is what Mr Furness [counsel for the taxpayers] is inviting us to do, when he says that the purchase and leaseback (or onward lease) of a film are inherently trading activities. There is no dispute that such activities are capable of forming part of a trade, and in many contexts the only reasonable conclusion would be that they did form part of a trade. But when the whole picture is examined, the conclusion will not necessarily be the same. The exercise which the FTT has to undertake is one of multi-factorial evaluation, and their conclusion can only be challenged as erroneous in point of law on *Edwards v Bairstow* grounds: see *Eclipse* at [113].

…

61. In the interests of clarity, it is important to distinguish between the evaluative exercise which the FTT has to perform, on the one hand, and the proposition that a taxpayer cannot be taxed by re-characterising what he has actually done as something else, on the other hand. Mr Furness submitted that the FTT were guilty of such a re-characterisation, but I am satisfied that they did not fall into an elementary error of this description. Their overall assessment of the commercial nature of the agreements as the payment of a lump sum in return for a series of six payments over 15 years … was not a crude conclusion based on an impermissible transformation of the taxpayers' activities into an economic equivalent, but rather a way of expressing the ultimate inference of fact which they drew from the totality of the primary facts which they had found.'

It is also important to note the warning which the court gave in *Eclipse* at [117]:

'Finally, on legal principles, it is elementary that the mere fact that a taxpayer enters into a transaction or conducts some other activity with a view to obtaining a tax advantage is not of itself determinative of whether the taxpayer is carrying on a trade: *Ensign Tankers (Leasing) Ltd v Stokes (Inspector of Taxes)* [1992] STC 226 at 241, [1992] 1 AC 655 at 677 (Lord Templeman).'

Lord Templeman was, to put it mildly, no friend of tax avoiders, so it is worth quoting from what he said in *Ensign Tankers* at 677:

'The production and exploitation of a film is a trading activity. The expenditure of capital for the purpose of producing and exploiting a commercial film is a trading purpose. By section 41 of the Act of 1971 capital expenditure for a trading purpose generates a first year allowance. The section is not concerned with the purpose of the transaction but with the purpose of the expenditure. It is true that Victory Partnership

only engaged in the film trade for the fiscal purpose of obtaining a first year allowance but that does not alter the purpose of the expenditure.'"—*Degorce v Revenue and Customs* [2017] EWCA Civ 1427.

TRADE EFFLUENT. "The appeal potentially raised two issues: i) Is the mixed liquid 'trade effluent' as defined by section 141 (1) of the Water Industry Act 1991? ii) If not, is it deemed to be trade effluent as a consequence of the charging scheme or contractual arrangements between Boots and Severn Trent? . . . As the judge correctly said, the question on this issue is whether a liquid which contains a mixture of the product of trade or industry and surface water constitutes trade effluent within the meaning of the statutory definition. . . . First, the definition in section 141 does not expressly exclude surface or storm water, whereas it does expressly exclude domestic sewage. So the threefold classification is not reproduced in the definition. Second, section 106 refers to at least three (and possibly four) different types of sewer. Three are expressly mentioned: a foul water sewer, a surface water sewer and a storm-water overflow sewer. The fourth is a combined sewer which is implicit in the provision in section 106 (2) (b) which applies 'where separate public sewers are provided for foul water and surface water'. If there are no separate sewers, then necessarily there must be a combined sewer. So that classification does not replicate the threefold division. Third, the definition expressly includes liquid partly produced in the course of trade. That part of the definition which contemplates a liquid partly produced in the course of trade thus contemplates a mixture. Moreover, the definition also contemplates a different kind of mixture, viz. a mixture of liquid and suspended particles of matter. . . . That case seems to me to be strong support for the proposition that a mixed liquid is to be treated as a single mixture, and not separated into what had been its former parts. Both these cases were decided before the passing of the Water Industry Act 1991 which, as I have said, was not intended to change the law. . . . Fifth, Boots' construction of the definition pays scant regard to the laws of physics. The operation of entropy tells us that once two liquids mix, they cannot be separated. Once you have added milk to your coffee or tonic to your gin, even though you can identify the sources from which the components of the mixed liquid originate, you have created a new and different liquid. Sixth, Boots' interpretation does not fit comfortably into the scheme of the 1991 Act. Absent both a consent to discharge trade effluent and also an approval by the undertaker under section 106 (2) (b) (ii) to discharge surface water into a foul sewer, a mixed liquid cannot be discharged into the public sewers at all. Chapter III fills that gap. It makes little sense to have two separate but concurrent approval regimes for a single body of mixed liquid. Seventh, at least in principle the remedy for any perceived injustice lies in the hands of the discharger. It is in control of the arrangement of its own internal infrastructure. It has chosen to construct its factory so that effluent produced by its manufacturing activities is mixed with rainwater before the mixed liquid enters the drain. The evidence adduced on behalf of Boots is that because of the combination of the topography of the site and the physical location of the drainage infrastructure, it would now be impractical or prohibitively expensive to retrofit the drainage. But I cannot see any reason in principle why it should not have arranged matters originally so that rainwater was separately discharged. Moreover, the facts of this particular case cannot affect the correct interpretation of section 141 of the Act. Although Mr Davies-Jones placed a lot of weight on the purpose of the provision, it seems to me that there is an entirely rational purpose for treating a mixed liquid as falling within the definition of trade effluent. The essential point is that a mixture of

trade effluent and surface water is still contaminated water; and will need to be treated in a different way from surface water. It may also be necessary to arrange for its eventual discharge in a different way. Whereas pure surface water could be discharged into a canal or a river, contaminated water cannot. The difference in treatment between surface water and foul water is also the reason why approval is needed under section 106 (2) to discharge pure surface water into a foul sewer."—*Boots UK Ltd v Severn Trent Water Ltd* [2018] EWCA Civ 2795.

TRADE PROCESSES. "The central issue in this appeal can be shortly stated. It is whether the air handling system used by Iceland Foods Limited ('Iceland') in its retail store at 4 Penketh Drive, Liverpool (the 'premises') is plant or machinery 'used or intended to be used in connection with services mainly or exclusively as part of manufacturing operations or trade processes' within the meaning of the Valuation for Rating (Plant and Machinery) (England) Regulations 2000 (the '2000 Regulations')…. I shall not repeat them, but it is important to understand that the scheme of the 2000 Regulations is that the plant and machinery described in the four scheduled Classes is rateable as part of the hereditament (see paragraph 2(a)(i)). Class 2 makes rateable certain plant and machinery used 'in connection with services to the hereditament'. It contains a general exception prefaced by the words 'other than', which is for 'any such plant or machinery which is in or on the hereditament and is used … in connection with services mainly or exclusively as part of manufacturing operations or trade processes'. Class 1 makes clear that plant and machinery used for generation, storage or transmission of power is rateable. Class 3 makes certain transportation and distribution equipment rateable. Class 4 concerns other specialist industrial equipment where it is or is part of a building or structure. Within Class 2 itself, the items of plant and machinery enumerated as rateable in Table 2 include all kinds of heating, cooling and ventilating, lighting, water supply, draining and hazard protection equipment. At first sight, therefore, it would seem that plant and machinery used to keep the air in a building within a particular temperature range would be 'used in connection with services to the hereditament' and, therefore, rateable. Moreover, at first sight, the exception for 'plant or machinery … used in connection with services mainly or exclusively as part of manufacturing operations or trade processes' would seem to be directed towards services used as part of some manufacturing or process activity undertaken by the occupier on the hereditament…. It is not, in normal parlance, a trade process to apply 'a continuous treatment of refrigeration at all times using equipment to maintain food in an artificial condition where but for the refrigeration it would be rendered worthless'. If one removes the cumbersome wording, one can see that keeping food in its same frozen state so that it may be sold is not any kind of trade process. Once that is clear, all the other arguments fall away. I would, however, reiterate that the question is not whether the plant serves the hereditament or the tenant, but whether the plant is used in connection with services mainly or exclusively as part of a trade process. Retail warehouses undertake a trade but not normally any trade process, certainly not so far as keeping the shop or the equipment therein at an appropriate temperature is concerned. Mr Kolinsky places too much weight on the requirement that the plant is used in connection with services mainly as part of a trade process. That is a secondary control, but not a primary one. Service equipment will be rateable unless it is used as part of a trade process. Keeping Iceland's freezers cool is not, in my judgment, a trade process, properly so called."—*Iceland Foods Ltd v Berry (Valuation Officer)* [2016] EWCA Civ 1150.

TRADE SECRET. Stat. Def. "information which—

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question, (b) has commercial value because it is secret, and (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret"), Trade Secrets (Enforcement, etc.) Regulations 2018 reg.2."

TRADER. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

TRAVEL SERVICE. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

TRAVEL TICKET. Stat. Def., Railways (Penalty Fares) Regulations 2018 reg.3.

TRAVELLING. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

TRAVELLING CIRCUS. Stat. Def., Wild Animals in Travelling Circuses (Scotland) Act 2018 s.3.

TREATMENT. "In our view the concept of 'treatment' requires to be given a wide interpretation, in common with the authorities to which we were referred. Moreover, it is important to bear in mind that what constitutes 'treatment' may vary according to context, and in particular in light of the nature of the procedure being undertaken."—*Spuc Pro-life Ltd, Appeal by Spuc Pro-life Ltd for Judicial Review* [2019] ScotCS CSIH 31.

TRIBUNAL. Stat. Def., "means any tribunal in which legal proceedings may be brought" (European Union (Withdrawal) Act 2018 s.20(1)).

TRIGGER. "The judge was of course perfectly entitled to inform his judgment by reference to the dictionary definitions to which he referred. It has to be remembered, however, that dictionary definitions are acontextual, and those responsible for formulating them are unlikely to have had the patentee's specific purpose in mind. In an appropriate context the words 'trigger' and 'mechanism' can have a meaning which is wider than the purely mechanical. I have no doubt that a gun in which the trigger operates a switch in an electric circuit which in turn releases a striker can properly be regarded as having a trigger mechanism.

In the present case the skilled person would understand from the description and drawings that the trigger mechanism includes more than just the trigger (shown as 22 in the drawings). It includes the parts downstream which react to the activation of the trigger and which lead to the activation of the drive mechanism. As far as the trigger itself is concerned, the claim specifies that it must extend from the front face of the housing. The passage at page 1 line 34 to page 2 line 2, in the general description of the invention, explains the purpose of the trigger being configured in this way. It is so that it can be simply activated by applying pressure against the surface of the target, which occurs on contact with the target. Whilst this is suggestive of a mechanical trigger, it is also consistent with the trigger being a pressure sensor or indeed an electrical push button, both of which would need to be positioned so as to facilitate easy contact with the target. These would all be 'a small device that releases a spring or catch and so sets off a mechanism" in accordance with the dictionary definition.'—*Saab Seaeye Ltd v Atlas Elektronik GmbH* [2017] EWCA Civ 2175.

TURNOVER. Stat. Def., Data Protection (Charges and Information) Regulations 2018 reg.1.

TWITTER. "Twitter is an online news and social networking service, which is widely used and very well known. It allows people using the Twitter website or a mobile device app to post and interact with messages of not more than 140 characters, called 'tweets'. This much is common knowledge. But Twitter is still a relatively new medium, and not everyone knows all the details of how it works. Where something is not a matter of common knowledge a judge is not entitled to bring his or her own knowledge to bear. The facts normally have to be proved. In this case, however, many of the relevant facts about Twitter have been agreed, and set out in a Schedule called 'How Twitter Works', which is attached to this judgment as an Appendix. I shall employ the abbreviations used in the Appendix."—*Monroe v Hopkins* [2017] EWHC 433 (QB).

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UK HEALTH SERVICE HOSPITAL. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

UNAVOIDABLE AND EXTRAORDINARY CIRCUMSTANCES. Stat. Def., Package Travel and Linked Travel Arrangements Regulations 2018 reg.2.

UNBRANDED GENERIC HEALTH SERVICE MEDICINE. Stat. Def., Branded Health Service Medicines (Costs) Regulations 2018 reg.1.

UNDERTAKING. "There is no definition of 'undertaking' in the 1977 Act nor, in my view, is one really necessary. As a matter of language, the word can describe the company or other entity which employs the inventor either in terms of its organisational structure or simply as an economic unit."—*Shanks v Unilever Plc* [2017] EWCA Civ 2.

UNDESIRABLE. "Turning to the meaning of the term 'undesirable' in this context I am satisfied that it is a word that calls for an exercise of planning judgment. I have reached that conclusion since it is an adjective with a potentially broad meaning and purview, used within the context of an approval process in planning legislation. The planning judgment to be made arises in the context of the qualified entitlement that Class Q creates and the purpose for establishing that qualified entitlement set out above. Given that conclusion, an error of law could only arise if that planning judgment were affected by one of the traditional public law grounds of challenge. I would not accede to Ms Clutten's submissions in so far as she seeks to argue that the term 'undesirable' is (like the noun 'eaves' in the *Waltham Forest* case) a word requiring an elaborate legal definition. It is a term which calls for a planning judgment from the decision-maker framed by the particular context in which it arises, namely that this is an application for prior approval of a form of permitted development created for the purpose of increasing the supply of housing, and not an application for planning permission. In my view it is perfectly reasonable to expect that this planning judgment will be reached against the backdrop of the purpose for creating this class in the first place."—*East Hertfordshire District Council v Secretary of State for Communities and Local Government* [2017] EWHC 465 (Admin).

UNITED KINGDOM. Stat. Def., National Emission Ceilings Regulations 2018 reg.2.

UNIVERSITY. "The term 'university' is not defined in the VAT Act. However, the conditions under which a body in the United Kingdom is entitled to use the word university in its title are regulated by statute. Over 100 bodies are presently entitled to call themselves a university and they vary greatly in character. A small but nonetheless significant number of them are private and run for profit. Some, such as the University of London, are collegiate federal universities in which, for many purposes, the constituent colleges operate on an independent basis. Others, such as the University of Oxford and the University of Cambridge, comprise a kind of federal system of colleges, schools and faculties, in which the colleges are generally financially

independent and self-governing. These are just examples. Other universities also comprise or have close relationships with colleges, including the University of the Arts London, the University of the Highlands and Islands and Queen's University of Belfast. The connection between each of these universities and its respective colleges has its own particular character and is a reflection of the history of the institutions involved."—*SAE Education Ltd v Revenue and Customs* [2019] UKSC 14.

See COLLEGE, SCHOOL OF HALL OF A UNIVERSITY.

UNJUST. "The meaning of the words 'unjust' and 'oppressive' were considered by Lord Diplock in relation to the very similar provision in s.8(3) of the Fugitive Offenders Act 1967 in *Kakis* at 782: '"Unjust" I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, "oppressive" as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into account; but there is room for overlapping and between them they would cover all cases where to return him would not be fair.'"—*Pillar-Neumann v Public Prosecutor's Office of Klagenfurt* [2017] EWHC 3371 (Admin).

UNITED KINGDOM RESIDENT. Stat. Def. ("means an individual who is resident in the United Kingdom"), Terrorism Act 2000 s.59B, inserted by Counter-Terrorism and Border Security Act 2019 s.4.

UNLAWFUL. "First, as a matter of the ordinary use of language it seems to me unnatural to describe a person's presence in the UK as 'unlawful' (which is not necessarily the same as not being 'lawful') when there is no specific legal obligation of which they are in breach by being here and no legal right to remove them—and all the more so where they have, as the Appellant did from the ages of four to 23, an absolute right at any time to acquire British nationality simply by making the necessary application."—*Akinyemi v Secretary of State for the Home Department* [2017] EWCA Civ 236.

UPLINK FREQUENCIES. Stat. Def., Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2.

UPSKIRTING. Stat. Def. (but without the term "upskirting" being used in the statute), Sexual Offences Act 2003 s.67A, inserted by Voyeurism (Offences) Act 2010 s.1.

URBAN DEVELOPMENT PROJECT. "The phrase 'urban development project' is not defined within the Regulations. Within column 1, Box 10, of the Table the phrase includes 'the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas'. It is not suggested that the phrase 'urban development project' is limited to these types of development and I have no difficulty in accepting that the types of development set out in Box 10 are illustrative only. How then is the phrase to be interpreted and applied? Detailed guidance in relation to that issue is to be found in the decision of the Court of Appeal in *R (Goodman) v London Borough of Lewisham* [2003] Env. L.R. 28. The relevant facts were these. The Claimant was a resident affected by the proposed redevelopment of a site having an area of 5540 m^2 for the construction of a warehouse and self-storage blocks. He sought judicial review of the Defendant's grant of planning permission for the development on the grounds that the local planning authority had erred in determining that the development did not require an environmental impact assessment. The basis of his claim was that the proposed development constituted an 'urban development project' within predecessor regulations to the 2011 Regulations. At first instance the judge

found that the local planning authority had been entitled to conclude that the proposed development was not an urban development project – it could not be said that its decision on that issue was irrational or perverse and, accordingly, the claim was dismissed."—*Crematoria Management Ltd, R (On the Application Of) v Welwyn Hatfield Borough Council* [2018] EWHC 382 (Admin).

USE. "'Use' is not defined in the 1990 Act, but 'processing' is defined in section 2(1) to mean 'any operation involved in their [sc. gamete or embryo] preparation, manipulation or packaging, and related terms are to be interpreted accordingly'. Processes preparatory to use are not 'use' within the meaning of Schedule 3. In my judgment, thawing is such a process, because it is preparatory to the act of replacing the embryo. The Consent to Thaw form rightly refers to two matters, thawing and replacing, and in my opinion these are legally separate. It was therefore unnecessary under the 1990 Act to obtain ARB's written informed consent to the thawing of the embryo."—*ARB v IVF Hammersmith Ltd* [2017] EWHC 2438 (QB).

USED. "In our judgment the key to the scope of the exemption lies in the concept of 'being used'. The word 'used' is an ordinary word in everyday use.... Millions of people take their dogs for a walk, let them run in their gardens or play with them, every day. That can be in their own properties or in public places. But to say that they are using them whilst doing so would be a misuse of language. The words 'for a lawful purpose' reinforces this interpretation. One has to identify the purpose for which the dog is being used and then ask whether that purpose is lawful. There may be cases where there is no doubt that the dog was being used by a constable, but a question mark arises over whether that use was lawful. For example, using a dog to fell a suspect to arrest him, or unreasonable force to prevent crime. The next issue is whether any use of a dog by a constable attracts the protection of section 10(3) or whether the words 'by a constable' import some restrictions. In our view, the statutory exemption could not sensibly apply to circumstances where, for example, a police dog was being used recreationally to flush out game. The words 'by a constable or a person in the service of the Crown' suggest a restriction on the purposes for which the dog is being used. The use must be as part of the activities of the police or other Crown body. In the context of a police constable, the use must be part of a policing activity. The term 'operational duty' may confuse because of its similarity to the concepts of 'on duty' and 'in the execution of duty' which are distinct legal terms. Whether a dog is being used for a policing activity by a constable is a question of fact. In respectful disagreement with the judge, we conclude that on the assumed facts upon which the issue was argued in this case, the exemption found in section 10(3) of the 1991 Act was not established. In particular, in exercising the dog as described the respondent was not using it."—*PY, R. v* [2019] EWCA Crim 17.

USING. "If section 2 is considered alone, and bearing in mind that the 2007 Land comprised, in substance, the Second Site, in the present case the question that might have been posed to the Defendant after February 2006 is 'Are you using the old site of the School for the purposes of a public elementary school for children of and in the Parish of Nettlebed and adjacent parishes?' If 'using' is given a narrow meaning, the answer to that question would be 'No', on the basis that premises which are empty are not 'used' for anything. In my view, however, taking a broad and practical approach to the question, the Defendant could equally legitimately answer it as follows: 'Yes, although the School has moved out of the old site and into new buildings on an adjacent site which now house a public elementary school for children of and in the

Parish of Nettlebed and adjacent parishes, the old site is being sold to raise money to pay for part of the cost of the new buildings, and the old site is therefore being used 'for the purposes of' that public elementary school'."—*Rittson-Thomas v Oxfordshire County Council* [2018] EWHC 455 (Ch).

USUAL AUTHORITY. "Although 'usual' authority is a useful description of authority derived from the office or position to which a person has been appointed, it is liable to cause confusion because it straddles both implied actual authority and ostensible authority. As the discussions in earlier cases show, the 'usual' authority of, say, a chief executive will often confer both implied and ostensible authority. Where the "usual" authority of a particular chief executive is limited in a way of which the third party has neither knowledge nor notice, the chief executive will not have implied actual authority but will have ostensible authority. The status of 'usual' authority is discussed in Bowstead & Reynolds on Agency (21st ed. 2018) at para 3-005 in some detail. We agree with the authors' conclusion that the law recognises only two basic notions of authority, actual and ostensible, that references to 'usual' authority should be treated and interpreted with caution and that to treat 'usual' authority as a separate foundation of authority is liable to cause confusion."—*Ukraine v The Law Debenture Trust Corporation Plc* [2018] EWCA Civ 2026.

UTILITY. Stat. Def. ("means—(a) electricity, gas or other fuel, or (b) water or sewerage"), Tenant Fees Act 2019 s.28 Sch.1, para.9.

V

VALID TRAVEL TICKET. Stat. Def., Railways (Penalty Fares) Regulations 2018 reg.3.

VALUE, IN MONEY OR MONEY'S WORTH. "The case raises an important point of principle concerning gaming duty, namely the interpretation of section 11(10)(a) of the Finance Act 1997 ('FA 1997'). The issue in the appeal is the pure point of law as to whether a player who places a bet in one of LCM's casinos using either a free bet voucher, or a non-negotiable chip (referred to collectively, both in this judgment and by the UT, as 'Non-Negs'), has staked 'value, in money or money's worth' with the casino, within the meaning of section 11(10)(a) of the FA 1997.... In the context of section 11(8), therefore, one is looking to ascertain a real-world gross gaming yield, whether comprising receipts from charges made by the casino or banker's profits. Likewise, in the context of section 11(10) (agreed to be the relevant sub-section here), the purpose of the provision as a whole is clearly to charge duty on the profits of a casino in its role as banker. Profits are measured by the difference between 'the value, in money or money's worth, of the stakes staked with the banker in any such gaming' (see section 11(10)(a)), and 'the value, in money or money's worth, of the prizes paid by the banker to those taking part in such gaming otherwise than on behalf of a provider of the premises,' (see section 11(10)(b)). The calculation of stakes staked under section 11(10)(b)), to my mind, in context, involves a conventional arithmetical calculation of real-world stakes received from players, which, if necessary, could feature as actual receipt or revenue figures in a set of accounts; it does not – on any natural reading – include artificial or notional values placed on tokens given to the player by the casino, as part of a promotional or marketing exercise, which intrinsically have no value and are non-negotiable, or at best have an economic value to the player equivalent to their face-value multiplied by the chances of winning. In real terms, when the casino gives out Non-Negs to favoured players, it is allowing the player to bet with its (the casino's) own money. There is no receipt by the casino contributing to its gross profits; on the contrary, in permitting the player to gamble with a Non-Neg, what the casino is actually doing is incurring a contingent (non-enforceable) liability to pay out, according to the relevant odds of the game, in respect of the face-value of the Non-Neg in the event that the chip is placed as a winning bet. It is, in my judgment, counter-intuitive in such circumstances to characterise what is essentially an item of the casino's own expenditure as part of the banker's profits or as a stake having a value in money or money's worth. In no sense could the face value of a Non-Neg, or even the value to the player calculated by reference to the chances of winning, feature as a receipt in a casino's accounts or be said to contribute to its gross profits. For that reason taken on its own, I would not regard a Non-Neg as being a stake which was required to be taken into account in the calculation of gross gaming yield as defined under section 11(8) or of banker's profits as referred to or defined under section 11(8)(b)) or section 11(10). In particular, I do

not consider that the amplified definition of banker's profits in section 11(10) requires one artificially to include the Non-Negs (which are clearly not items of receipt directly contributing to profit, but rather items of expenditure) in the statutory profit calculation. In other words, in construing the relevant provisions one has to have regard to the relevant context. Although the phrase in section 11(10)(a) the stakes staked with the banker could arguably be said, linguistically, to be broad enough to include a Non-Neg (simply because a Non-Neg chip is placed on the gaming table by a favoured recipient as a stake), in my judgment, the phrase, construed in its actual context – i.e. the ascertainment of gross gaming yield and banker's profits – does not permit the artificial inclusion, as an item of stake under section 11(10)(a), of an amount of the casino's promotional marketing expenditure given to the player by the casino. Only in the most general and indirect sense could such a 'stake' be said to be contributing to profit; and it could not be said in any real sense to constitute part of the gross gaming yield of the casino.... In such circumstances I see no justification for the artificial assumption that 'an objective ascertainment of value, rather than one derived either from a perception of value to the player, or value to the banker' (as per Briggs J supra) of a Non-Neg leads to the conclusion that its face value is the objective value in money or money's worth for the purposes of section 11(10)(a). On the contrary, I agree with the analysis of the UT in its judgment at [30] to [35] that, on an objective assessment of value, a Non-Neg can have no value in money or money's worth for the purposes of section 11(10)(a)."—*Revenue and Customs (HMRC) v London Clubs Management Ltd* [2018] EWCA Civ 2210.

VEHICLE. Stat. Def., Laser Misuse (Vehicles) Act 2018 s.3; Stat. Def. ("means a mechanically-propelled vehicle or a vehicle designed or adapted for towing by a mechanically-propelled vehicle"), Parking (Code of Practice) Act 2019 s.10(1).

VESSEL. Stat. Def. ("includes any floating structure that is capable of being manned"), Works Detrimental to Navigation (Powers and Duties of Inspectors) Regulations 2018 reg.2; Stat. Def. ("includes a reference to—(a) a ship or boat or any other description of vessel used in navigation, and (b) a hovercraft, submersible craft or other floating craft, but does not include a reference to anything that permanently rests on, or is permanently attached to, the sea bed"), Act 2018 s.38(4).

VETERINARIAN. Stat. Def., Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2.

VEXATIOUS. "As a matter of ordinary language, the term 'vexatious' is apt to characterise an action, claim, accusation, or complaint, which has been – '... instituted or taken without sufficient grounds, purely to cause trouble or annoyance to the defendant (Oxford English Dictionary)'. A similar definition can be found in Chambers Dictionary, being an action etc – '... brought on insufficient grounds, with the intention merely of annoying the defendant.' Those definitions include references to the motive of the person making the vexatious claim. However the term 'vexatious' has a different meaning when used in certain specific legal contexts, of which this case is an example. In such cases, it is unnecessary to consider the motive of the person making the complaint. Authoritative guidance has been given by the courts as to the proper approach in law to be adopted by a decision-maker when assessing whether or not an action, claim, accusation or complaint is 'vexatious'. In *Bhamjee v Forsdick* [2004] 1 WLR 88, the Court of Appeal explained in paragraph [7]: '7 The courts have traditionally described the bringing of hopeless actions and applications as "vexatious", although this adjective no longer appears in the Civil Procedure Rules:

compare RSC Ord 18, r 19(r)(b) with CPR r.3.4(2). In *Attorney General v Barker* [2000] 1 FLR 759 Lord Bingham of Cornhill CJ, with whom Klevan J agreed, said, at p 764, para 19, that "vexatious" was a familiar term in legal parlance. He added: "The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process."' This approach has been accepted as applying in Scotland (*Lord Advocate v McNamara* 2009 SC 598, paragraph [31] et seq). [24] In the light of that guidance, it is clear that the test of a vexatious claim is an objective one, which can be satisfied by an assessment of all the facts and circumstances (cf *Lord Advocate v McNamara* 2009 SC 598 at paragraph 31 et seq). It is not necessary to establish the subjective motive of the instigator of the claim, although in some cases, such motive may emerge from evidence about the circumstances. It is also clear that the question whether a complaint should be categorised as 'vexatious' is one which might reasonably result in different views being taken by reasonable decision-makers. The only question for this court is whether no reasonable tribunal such as the SLCC could, on the information before it, reasonably have reached the conclusion it did."—*Mazur Against The Scottish Legal Complaints Commission (SLCC)* [2018] ScotCS CSIH 4.

"Dransfield is an English case concerning English legislation but what is important for present purposes is that Arden LJ, in the passages in her judgment to which we were referred, expressly declines to offer a definition of or test for 'vexatious' or 'vexatiousness'. It would be remarkable if the word 'vexatious' when found in section 14(1) of the English Act of 2000 meant something different from the same word when found in section 14(1) of the Scottish Act of 2002; the terms of the two subsections are essentially identical. However, as yet, we do not see there as being any 'test' for vexatiousness in the context of Freedom of Information requests, either in Scotland or in England, and we do not propose to provide one. We shall have something to say about what is meant by 'vexatious' but, agreeing with Arden LJ, we are not inclined to attempt a comprehensive definition or to put forward a test. Rather, in the absence of a statutory definition, we propose to interpret 'vexatious' by reference to the ordinary, natural meaning of the word, read in its legislative context. . . . Thus, for Arden LJ the standard for a finding of vexatiousness should be a high one given 'the constitutional nature of the right' (at para 2 of her judgment she describes the 2000 Act as an important statute because it enables ordinary citizens to obtain the information held by an authority and thus to know what the authority knows). It is because of that context that we would understand that Arden LJ takes as her starting point the proposition that for a request to be vexatious there must be 'no reasonable foundation for thinking that the information sought would be of value'. We agree that that is an appropriate way of looking at the legislation. Subject to sections 2, 9, 12 and 14, a person who requests information from a Scottish public authority which holds the information is entitled to be given it by the authority: 2002 Act section 1(1) and (6). Now section 14 of course provides that section 1(1) does not oblige a Scottish public authority to comply with a request which is vexatious, but that is of the nature of an exception to the generality of requests in respect of which there is an entitlement to the requested information. 'Vexatious' is, as Arden LJ says, a strong word. Its primary meaning according to the

Shorter Oxford Dictionary is 'causing or tending to cause vexation, annoyance or distress; annoying; troublesome' but here it has a connotation of being simply troublesome or, as Chambers Twentieth Century Dictionary has it, 'wantonly troublesome'. In other words, not merely causing or tending to cause vexation, annoyance or distress but causing or tending to cause vexation, annoyance or distress for no purpose or benefit or, at least, very little purpose or benefit. Although she does not specifically mention the annoyance or distress consequent upon a vexatious request, it is this idea of gross disproportion as between much trouble inevitably caused and little benefit possibly gained that we see Arden LJ attempting to capture with her reference to 'no reasonable foundation for thinking that the information sought would be of value'. We note her use of 'reasonable' and we note her use of 'value'. As she says, and as Mr Crabb and Mr Scullion were agreed before us, the standard must be an objective one; what is under consideration is value in the information itself, as judged by a reasonable observer, not fanciful or purely idiosyncratic value, and not simply the malicious satisfaction of putting a public authority to trouble and perhaps causing it embarrassment. We also agree with what Arden LJ has to say about the need to take a balanced or rounded approach, having regard to all the circumstances of the case, it being understood that on an application of such an approach for a request to be vexatious the balance must point to a disproportion of trouble over benefit."—*Beggs, Appeal by William Frederick Ian Beggs Against The Scottish Information Commissioner* [2018] ScotCS CSIH 80.

VOID. "In parenthesis at this point, I add that, as explained by Millett LJ in *Trustee of the property of FC Jones and Sons v Jones* [1997] Ch 159, 164H-166H (a personal bankruptcy case), it is clear that the reference to a disposition being 'avoided' by the insolvency statute is not a reference to the ideas conveyed by the use of the terms 'void' and 'voidable', as generally understood elsewhere in the law. Those terms refer respectively (1) to something that is and was void from the beginning, and (2) to something which was valid at the beginning but was subsequently avoided retrospectively. The latter case leaves open a window of opportunity for a transfer to a third party for value and in good faith, which on general equitable principles may bar rescission thereafter. But, in the context of s.127 (as also in the case of personal bankruptcy), the legal consequence of the transaction at the time it was carried out depends on what happens subsequently. If the winding-up order is eventually made, the disposition is and always was void from the beginning, although the court has the power to validate it in an appropriate case. If however the winding-up order is not made, the disposition is and always was valid."—*Officeserve Technologies Ltd v Annabel's (Berkeley Square) Ltd* [2018] EWHC 2168 (Ch).

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VOTE. "As a simple matter of language, it is possible to equate the words 'to vote' with the simple marking of the ballot paper. But that conclusion does not survive if those words are construed in their context. Rule 18 provides that the outcome of an election is determined by the count of votes given to each candidate. This makes a point which is obvious as a matter of common experience, that voting is an act of choosing between the candidates who have been nominated. A description of voting only in terms of marking a ballot paper focuses on the physical act but pays no intention at all to the purposes of the act, namely for the voter to state her preferred candidate. I do not consider it possible to separate the act from its purpose."—*Andrews, R (On the Application Of) v Minister for the Cabinet Office* [2019] EWHC 1126 (Admin).

VOUCHER. "Face-value voucher". Stat. Def., Proceeds of Crime Act 2002 s.303B(4)(c) inserted by the Criminal Finances Act 2017 s.15.

W

WELL. Stat. Def. (including borehole), Oil and Gas Authority (Offshore Petroleum) (Retention of Information and Samples) Regulations 2018 reg.1.

WHIPLASH INJURY. Stat. Def. ("means an injury of soft tissue in the neck, back or shoulder that is of a description falling within subsection (2), but not including an injury excepted by subsection (3). (2) An injury falls within this subsection if it is—(a) a sprain, strain, tear, rupture or lesser damage of a muscle, tendon or ligament in the neck, back or shoulder, or (b) an injury of soft tissue associated with a muscle, tendon or ligament in the neck, back or shoulder. (3) An injury is excepted by this subsection if—(a) it is an injury of soft tissue which is a part of or connected to another injury, and (b) the other injury is not an injury of soft tissue in the neck, back or shoulder of a description falling within subsection (2)."), Civil Liability Act 2018 s.1.

WHISTLE BLOWER. "The phrase 'whistle blower' plainly covers a range of situations."—*Emblin, R (On the Application Of) v Revenue And Customs* [2018] EWHC 626 (Admin).

WILD ANIMAL. Wild Animals in Travelling Circuses (Scotland) Act 2018 s.2; Stat. Def. ("means an animal of a kind which is not commonly domesticated in Great Britain"), Wild Animals in Circuses Act 2019 s.1(5).

WiMAX SYSTEM. Stat. Def., Wireless Telegraphy (Mobile Repeater) (Exemption) Regulations 2018 reg.2.

WITHDRAWAL AGREEMENT. Stat. Def., "an agreement (whether or not ratified) between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom's withdrawal from the EU" (European Union (Withdrawal) Act 2018 s.20(1)).

WOMAN. Stat. Def., "'woman' includes a person who has the protected characteristic of gender reassignment (within the meaning of section 7 of the Equality Act 2010) if, and only if, the person is living as a woman and is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of becoming female." Gender Representation on Public Boards (Scotland) Act 2018 s.2.

WORKER. "The expression 'employed' is not defined by the EU Regulations, but the concept of 'worker' has been elucidated by the CJEU. An essential feature is that 'a person performs services for and under the direction of another person in return for which he receives remuneration' (Case 53/81 *Levin v Staatssecretaris van Justitie* [1982] 2 CMLR 454). In other cases, where a person is not a worker but provides services, freedom of establishment is available."—*Hrabkova v Secretary of State for Work and Pensions* [2017] EWCA Civ 794.

"In our view the ET was not only entitled, but correct, to find that each of the Claimant drivers was working for ULL as a 'limb (b) worker'.... There is a high degree of fiction in the wording (whether in the 2013 or the 2015 version) of the standard form agreement between UBV and each of the drivers:-... We agree with the ET that at the latest the driver is working for Uber from the moment when he accepts

any trip. The point which we have found much more difficult, as did Judge Eady QC in the EAT, is whether the driver can be said to be working for Uber when he is in London with the App switched on but before he has accepted a trip. In the end, like Judge Eady, we take the view that the conclusion in paragraph 100 was one which the ET were entitled to reach. We bear in mind that appeal from an ET lies only on a question of law (Employment Tribunals Act 1996, section 21(1)). Even if drivers are not obliged to accept all or even 80% of trip requests, the high level of acceptances required and the penalty of being logged off if three consecutive requests are not accepted within the ten second time frame justify the ET's conclusion that the drivers waiting for a booking were available to ULL and at its disposal. If a particular driver had entered into an obligation of the same nature for another entity and also had the rival app switched on then, as a matter of evidence, Uber would be able to argue that that driver was not at Uber's disposal."—*Uber BV ("UBV") v Aslam* [2018] EWCA Civ 2748.

WORKING DAY. Stat. Def., Renewable Heat Incentive Scheme Regulations 2018 reg.2; Stat. Def., Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 reg.2; Stat. Def., Railways (Penalty Fares) Regulations 2018 reg.3.

WORKING TIME. Stat. Def., Agricultural Wages (Wales) Order 2018 art.2.

WORKS. "It is readily understandable that the draftsman considered that a 'canal' could be regarded as falling within the generic concept of 'works', or, in some circumstances at least, within the concept of 'cuts'. It is the use of the word 'dock' in the proviso which we think has particular significance, because this, in our view, indicates beyond sensible dispute that the draftsman understood that such a structure, or work, could otherwise fall within the meaning of 'works'. And it was surely for this reason that the proviso needed to embrace docks as well as locks, canals and cuts. If docks had not been encompassed within the concept of 'works' in the deeming provision, there would have been no need for the proviso to exclude certain docks from its ambit. That, it seems to us, is a cogent enough reason in itself, within a conventional exercise in statutory interpretation, to sustain our understanding of the phrase 'locks cuts and works' in section 4 as including docks."—*Environment Agency v Barrass* [2017] EWHC 548 (Admin).

WOULD. "Whilst accepting that the word 'would' may be used colloquially to express a conclusion based in chance, the context in which we must interpret it is not an everyday colloquial one, but one which underpins the test applied by the ET in assessing the appellant's loss."—*Malcolm v Dundee City Council* [2017] ScotCS CSIH 32.

WRITTEN NOTICE. "The issue in this reclaiming motion is in short compass. It is whether an email, which was sent by an agent of the pursuers to an employee of the defenders and attached a document entitled 'Statement of Account', could constitute a 'written notice' requiring payment in terms of site-specific agreements entered into between the parties.... When the question, of whether the terms of the email were sufficient to convey the necessary information to the defenders, is asked, the answer must be in the negative. What was needed was a clear statement (Mannai Investment (supra), Lord Clyde at 782), not just that sums were overdue, but, as a bare minimum, that the pursuers were requiring the defenders to pay these sums within '20 Banking Days' (cf 20 days simpliciter in clause 6.1). Although the matter would have been clear if the word 'notice' had been used in the email or reference had been made to

clause 8.4.3, neither course was necessary for the email to have constituted the requisite notice in terms of that clause. There had, however, to be specific reference to the requirement to pay within 20 Banking Days, which was a special feature of the clause and differed from the normal payment terms, to enable the recipient to understand that this was a particular requirement being made under the contract. The defenders would then have been put on notice of that requirement and, keeping the contractual terms to the forefront of their mind, could have deduced what the consequences of a failure to respond might be. As matters stood, the recipient was not put on notice that the attachment of a statement of account to the email, apparently in the normal course of business and relative to the provisions on payment and not termination, meant any more than that."—*General Ltd, Reclaiming Motion by our Generation Ltd Against Aberdeen City Council* [2019] ScotCS CSIH 42.

WRONGED. "Whether a service person has been 'wronged' is a different matter than whether he is the victim of a legal wrong. The concept is broader and more diffuse than that. Correspondingly the decision-makers at the various levels have to make a judgment as to how to approach the complaint and how to determine whether the complaint of being 'wronged' is 'well-founded'. While the decision-makers have some latitude and discretion as to how to approach their task, it is not limitless and they cannot do so in a way which no reasonable decision-maker could."—*Ross v Secretary of State for Defence* [2017] EWHC 408 (Admin).

Y

YEARLY INTEREST. "This appeal concerns the relationship between two statutory provisions, one very old and the other very young. The old provision, which dates back to the inception of Income Tax during the Napoleonic Wars, but is now to be found in section 874 of the Income Tax Act 2007, requires a debtor in specific circumstances to deduct income tax from payments of 'yearly interest' arising in the United Kingdom. The young provision, first made the subject of legislation in 1986 (and replacing previous judge-made rules) but now to be found in rule 14.23(7) of the Insolvency Rules 2016, requires a surplus remaining after payment of debts proved in a distributing administration first to be applied in paying interest on those debts in respect of the periods during which they had been outstanding since the commencement of the administration. The short question, which has generated different answers in the courts below, is whether interest payable under rule 14.23(7) is 'yearly interest' within the meaning of section 874, so that the administrators must first deduct income tax before paying interest to proving creditors.... But those cases nonetheless provide the answer to the conundrum: what period of durability is to be identified for interest payable in a single lump sum as compensation for the payee being out of the money in the past, for the purpose of deciding whether it is to be treated as yearly interest, under the Hay principles? The simple answer, supplied by all the second group of cases, is that it is the period in respect of which the interest is calculated, because that is the period during which the loss of the use of money or property has been incurred, for which the interest is to be compensation. This appears also to have been the assumption made by the drafter of what is now section 874(5A), quoted above. It deems payment of interest to an individual in respect of compensation to be yearly interest 'irrespective of the period in respect of which the interest is paid'. This suggests that, but for the deeming provision (introduced, so the court was told, to deal with compensation for mis-selling of Payment Protection Insurance), the question whether the interest would or would not have been yearly interest would have depended upon the duration of the period in respect of which the compensatory interest was calculated."—*Revenue and Customs v Joint Administrators of Lehman Brothers International (Europe)* [2019] UKSC 12.